

CAUSE NO. DC-19-09828

D&T PARTNERS, LLC) IN THE DISTRICT COURT
(successor in interest to)
ACET VENTURE PARTNERS,)
LLC),)

Plaintiff,)

VS.)

) DALLAS COUNTY, TEXAS

ACET GLOBAL, LLC; BAYMARK)
ACET HOLDCO, LLC; BAYMARK)
ACET DIRECT INVEST, LLC;)
BAYMARK MANAGEMENT, LLC;)
BAYMARK PARTNERS; DAVID)
HOOK; TONY LUDLOW; and)
WINDSPEED TRADING, LLC,)

Defendants.) 116TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

JULIE A. SMITH

APRIL 13, 2021

ORAL DEPOSITION OF JULIE A. SMITH, produced as a
witness at the instance of the Plaintiff, and duly
sworn, was taken in the above-styled and -numbered cause
on April 13, 2021, from 1:07 p.m. to 4:42 p.m., before
Larissa L. McPhearson, CSR in and for the State of
Texas, reported by machine shorthand, by Zoom, pursuant
to the Texas Rules of Civil Procedure.

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<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Mr. Jason B. Freeman</p> <p>4 FREEMAN LAW, PLLC</p> <p>5 7011 Main Street</p> <p>6 Frisco, Texas 75034</p> <p>7 Phone: (214)984-3410</p> <p>8 Fax: (214)984-3409</p> <p>9 E-mail: jason@freemanlaw.com</p> <p>10 FOR THE DEFENDANTS, ACET GLOBAL, LLC and BAYMARK:</p> <p>11 Mr. Edward P. Perrin</p> <p>12 HALLETT & PERRIN, PC</p> <p>13 1445 Ross Avenue</p> <p>14 Suite 2400</p> <p>15 Dallas, Texas 75202</p> <p>16 Phone: (214)953-0053</p> <p>17 E-mail: eperrin@hallettperrin.com</p> <p>18 FOR THE DEFENDANT, WINDSPEED TRADING, LLC:</p> <p>19 Ms. Brenda Hard-Wilson</p> <p>20 Mr. Tim Woods</p> <p>21 HIGIER ALLEN & LAUTIN, PC</p> <p>22 2711 North Haskell Avenue</p> <p>23 Suite 2400</p> <p>24 Dallas, Texas 75204</p> <p>25 Phone: (972)716-1888</p> <p>E-mail: bhard-wilson@higierallen.com</p> <p>twoods@higierallen.com</p> <p>ALSO PRESENT:</p> <p>Mr. Anthony Ludlow, ACET Global, LLC</p> <p>Mr. Tomer Damti, D&T Partners, LLC</p>	<p>1 INDEX (continued)</p> <p>2 15 E-mail, subject: Windspeed/Super G Transaction..91</p> <p>3 16 E-mail, subject: Super G/Windspeed - Loan</p> <p>4 Agreement.....98</p> <p>5 17 E-mail, subject: Super G/Windspeed.....99</p> <p>6 18 E-mails, subject: Super G/Windspeed.....105</p> <p>7 19 E-mails, subject: Super G/Windspeed.....107</p> <p>8 20 E-mails, subject: ACET Inventory as of</p> <p>9 1/24/2019.....112</p> <p>10 21 E-mail, subject: ACET.....115</p> <p>11 22 E-mails, subject: ACET.....115</p> <p>12 23 E-mails, subject: Windspeed/Super G - Loan</p> <p>13 Agreement.....127</p> <p>14 24 E-mails, subject: Windspeed/Super G - Loan</p> <p>15 Agreement.....129</p> <p>16 25 E-mails, subject: Windspeed/Super G - Loan</p> <p>17 Agreement.....132</p> <p>18 26 E-mails, subject: Windspeed/Super G - Loan</p> <p>19 Agreement.....133</p> <p>20 27 E-mail, subject: Windspeed/Super G - Szeto</p> <p>21 Signature Pages.....134</p> <p>22 28 E-mails, subject: Windspeed/Super G - Loan</p> <p>23 Agreement.....136</p> <p>24 30 E-mails, subject: ACET.....117</p> <p>25</p>
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<p style="text-align: right;">Page 6</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And what does that mean to you?</p> <p>4 A. That I have to tell the truth.</p> <p>5 Q. Ms. Smith, just a couple of ground rules. This</p> <p>6 is actually pretty easy. If I ask a question, if you</p> <p>7 will just let me complete it before you give an answer</p> <p>8 just so the transcriptionist can get everything down.</p> <p>9 And good lead-in there, because if you give an answer,</p> <p>10 if you will try to give a verbal answer --</p> <p>11 A. Okay.</p> <p>12 Q. -- because otherwise it doesn't make it on the</p> <p>13 transcript. I ask a question that you don't understand,</p> <p>14 just let me know, and if you need to take a break at any</p> <p>15 time for anything, just let me know. I will probably</p> <p>16 just request that you answer the question that's on the</p> <p>17 table at that time, and then we can take a break anytime</p> <p>18 you need it.</p> <p>19 A. Okay.</p> <p>20 MR. FREEMAN: One -- a couple of</p> <p>21 housekeeping orders I think for everyone before we jump</p> <p>22 into the questions. For the defendants, I wanted to put</p> <p>23 on that we have -- I assume everyone is still in</p> <p>24 agreement -- we have a running agreement that any</p> <p>25 objections by any of the defendants' attorneys will</p>	<p style="text-align: right;">Page 8</p> <p>1 communications that are not -- and we'll call those</p> <p>2 privileged communications -- if you have communications</p> <p>3 that are not privileged and can -- that are responsive</p> <p>4 to the question, you may respond to the question with</p> <p>5 that information. Can we have that agreement?</p> <p>6 MR. FREEMAN: Ed, well, so here's the</p> <p>7 problem that I've got with that is I need to know when a</p> <p>8 privilege is effectively being asserted, and that</p> <p>9 doesn't sound like that will alert me to it.</p> <p>10 MR. PERRIN: I hear what you're saying, but</p> <p>11 if she says I can't answer that without going into</p> <p>12 privilege, I think it's telling you that. If she has</p> <p>13 information that is not privileged and she answers it,</p> <p>14 it's telling you that she does have that information,</p> <p>15 but you're saying if there's anything else that may be</p> <p>16 privileged, you want me to assert that on every one?</p> <p>17 MR. FREEMAN: Yes, or I mean, it's okay if</p> <p>18 Ms. Smith asserts it; however, you know, whoever asserts</p> <p>19 it, but I do want to know if something is being</p> <p>20 withheld, you know, on a basis of privilege.</p> <p>21 MR. PERRIN: Well, I mean, she can respond</p> <p>22 with -- if there's privilege, she thinks there's</p> <p>23 privilege, she can respond without disclosing privileged</p> <p>24 information, I can say yes. How about that?</p> <p>25 MR. FREEMAN: Wait. What was that?</p>
<p style="text-align: right;">Page 7</p> <p>1 apply to the other defendants, and I would also like</p> <p>2 to -- since we've got a few people on this Zoom that are</p> <p>3 not noticed parties just to have everyone confirm that</p> <p>4 there's no one else in the room with them during this</p> <p>5 deposition. Can we have each of the parties without a</p> <p>6 video just confirm that? Tomer, you -- can you confirm</p> <p>7 that?</p> <p>8 MR. DAMTI: Yes, I don't have anybody in</p> <p>9 here.</p> <p>10 MR. FREEMAN: Okay. Mr. Ludlow, can you</p> <p>11 confirm that?</p> <p>12 MR. LUDLOW: Yes, it's confirmed. No one</p> <p>13 is with me.</p> <p>14 MR. FREEMAN: Thank you.</p> <p>15 Q. Ms. Smith, what is --</p> <p>16 MR. PERRIN: Jason, before you go on, due</p> <p>17 to the nature of this deposition, we'd like to have an</p> <p>18 agreement with you if you can about a standing</p> <p>19 instruction to the witness that, instead of having us do</p> <p>20 it each time, that there would be a standing instruction</p> <p>21 to the witness that, to the extent the answer to a</p> <p>22 question calls for communications that are</p> <p>23 attorney-client communications or with other counsel for</p> <p>24 the same client communications that you're instructed</p> <p>25 not to include those in your answer. If you have</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. PERRIN: If I can re -- I can -- to the</p> <p>2 extent I can respond without providing any privilege and</p> <p>3 then gives her answer. In other words, there's some</p> <p>4 things she's not going to be able to probably respond to</p> <p>5 because it's pure privilege, but --</p> <p>6 MR. FREEMAN: Right.</p> <p>7 MR. PERRIN: -- but whatever that is, there</p> <p>8 may have been discussions with other parties or other</p> <p>9 counsel, for example, other parties that were in the</p> <p>10 transactions that is not privileged that she can respond</p> <p>11 to.</p> <p>12 MR. FREEMAN: Right. Now, I think we just</p> <p>13 have to -- you know, I mean, I know it's not an easy</p> <p>14 process, but I think we just have to state that, hey,</p> <p>15 we're not going -- I'm not going into privileged areas</p> <p>16 on that, and if it's super sensitive, you know, we may</p> <p>17 have to ask questions to pin down exactly what the, you</p> <p>18 know, what privilege or what the scope of that assertion</p> <p>19 is, but I don't think I can do it on a blanket manner</p> <p>20 because I don't think that will -- I don't think that</p> <p>21 will -- if there's something that has to be tested or</p> <p>22 challenged later, I don't think it will provide the</p> <p>23 Court with a record to do that.</p> <p>24 MR. PERRIN: Well, the reason for my idea</p> <p>25 on the instruction was to make that instruction, and</p>

<p style="text-align: right;">Page 10</p> <p>1 then to the extent she can answer, she would do so. If 2 she couldn't do so, she would let you know, I can't, 3 that's all privileged. 4 MR. FREEMAN: I don't think I -- and maybe 5 I'm not understanding it, Ed, but I don't think I'm in a 6 position to agree, but I certainly understand if a 7 privilege is asserted, you know, that's the privilege 8 holder's right to assert it. 9 MR. PERRIN: Well, it -- no, it's the 10 client's right to assert it, so we just have to tell you 11 if it's privileged. 12 MR. FREEMAN: Right. The privilege -- 13 MR. PERRIN: We don't have the right to 14 waive it. 15 MR. FREEMAN: Precisely. The privilege 16 holder is the client. It's their the decision, and an 17 attorney has got to assert it unless privileged -- you 18 know, the client tells them they're waiving it. 19 MR. PERRIN: If I can't have that 20 instruction in the record, then I'm going to have to 21 make it every question. 22 MR. FREEMAN: Well, you have had no problem 23 objecting to every question thus far. 24 MR. PERRIN: Oh, I've let a couple slip 25 through.</p>	<p style="text-align: right;">Page 12</p> <p>1 successor to those liabilities. 2 Q. Okay. What are the grounds that generally -- 3 what are the grounds that give rise to successor 4 liability? 5 A. I'm not sure I understand what you're asking. 6 Q. What are the circumstances in which successor 7 liability might apply? 8 A. Well, as I said, it's normally the result of a 9 transfer of assets and liabilities, and the transferee 10 may take on some liabilities as a successor to those 11 assets and liabilities. 12 Q. Okay. I mean, does that generally come about 13 like as a result of expressly or implicitly assuming 14 those liabilities? 15 A. I believe it can be both. 16 Q. Okay. Are there other -- are there other 17 grounds that might give rise to that liability? 18 A. I don't know. 19 Q. Like defrauding creditors? 20 A. I don't know. 21 Q. So you don't know if a transaction were 22 intended to defraud creditors if that might give rise to 23 successor liability? 24 A. I'm a transactional attorney, not a litigation 25 attorney, so I don't -- I'm not going to try to tell you</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. FREEMAN: You've let a couple. I mean, 2 you let a couple. You have your -- you're in good moods 3 some days and not in others, and I know I have that 4 effect on people. 5 MR. PERRIN: Well, then if that's the case, 6 I need just a minute with the witness to make sure that 7 we're on the same page. 8 MR. FREEMAN: Okay. That's fine. 9 (Off the record from 1:14 to 1:16 p.m.) 10 MR. PERRIN: Jason, we will do that. You 11 did mention something that you want an answer to a 12 question before you discuss with counsel, but, as you 13 know, the privilege issue and the question about 14 privilege, she's entitled to discuss that prior to her 15 answer, and so if she has a question on that, she may 16 have to ask, and we'll see. 17 MR. FREEMAN: Sure. 18 MR. PERRIN: Okay. 19 MR. FREEMAN: Understood. We got 20 everything else, or does that cover everything? 21 MR. PERRIN: At this point, I think so. 22 Q. Okay. Ms. Smith, what is successor liability? 23 A. I normally see it in the context of a transfer 24 of assets or an M&A transaction, but it's where someone 25 assumes liabilities of another party and becomes</p>	<p style="text-align: right;">Page 13</p> <p>1 the elements of fraud. 2 Q. Okay. Is there any relationship between 3 Baymark Partners and Windspeed Trading, LLC? 4 A. Yes. 5 Q. What is that relationship? 6 A. Baymark is a warrant to potentially acquire 7 equity interests in Windspeed. 8 Q. Okay. Is there any relationship between 9 Windspeed Trading, LLC, and Super G Capital, LLC? 10 A. Super G Capital is a senior lender, secured 11 lender to Windspeed. 12 Q. Okay. Any other relationship? 13 A. Super G, I think, is part of their 14 consideration for the loan also received a warrant. 15 Q. Okay. And is there any relationship between 16 Baymark Partners and Super G Capital, LLC? 17 A. No. 18 Q. Does Baymark Partners maintain a board member 19 on Windspeed's board of managers? 20 A. They did when we first did this transaction. I 21 don't know if there's still one on the board. 22 Q. Okay. Are you aware of anyone stepping down 23 from the board or being removed? 24 A. No. No. 25 Q. Does Baymark Partners have a contractual right</p>

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<p>1 to purchase 40 percent of Windspeed for \$100?</p> <p>2 A. Yes.</p> <p>3 Q. Does Super G maintain a board member on</p> <p>4 Windspeed board of managers?</p> <p>5 A. They did back when we originally did the</p> <p>6 company agreement. I don't know that they do or don't</p> <p>7 now.</p> <p>8 Q. Okay. Have you seen anything to indicate that</p> <p>9 they no longer do?</p> <p>10 A. No.</p> <p>11 Q. Does Super G have a contractual right to</p> <p>12 purchase 40 percent of Windspeed for \$100?</p> <p>13 A. Yes.</p> <p>14 Q. Did Hallett & Perrin draft the company</p> <p>15 agreement providing for Baymark Partners and Super G</p> <p>16 Capital to maintain board members on Windspeed's board</p> <p>17 of managers?</p> <p>18 A. Yes.</p> <p>19 Q. Did Hallett & Perrin draft the warrant purchase</p> <p>20 agreement that gave Baymark Partners and Super G Capital</p> <p>21 the contractual right to purchase 40 percent each of</p> <p>22 Windspeed for \$100?</p> <p>23 A. Yes.</p> <p>24 Q. Were both documents drafted in 2018?</p> <p>25 A. Yes.</p>	<p>1 THE WITNESS: Okay.</p> <p>2 A. I'm sorry, repeat the question.</p> <p>3 Q. Does a fiduciary duty, does that arise out of</p> <p>4 the relationship between the fiduciary and the party to</p> <p>5 whom that runs?</p> <p>6 MR. PERRIN: Objection, form.</p> <p>7 A. Yes, so a fiduciary relationship is -- occurs</p> <p>8 within a relationship between a fiduciary and the</p> <p>9 beneficiary fiduciary duty.</p> <p>10 Q. Okay. And then would you understand a manager</p> <p>11 serving on a board of managers to have a legal</p> <p>12 relationship with that entity?</p> <p>13 MR. PERRIN: Objection, form.</p> <p>14 A. Yes, it has a legal relationship with that</p> <p>15 entity.</p> <p>16 Q. Why was the foreclosure -- in this transaction</p> <p>17 or set of transactions at issue in this case, why was</p> <p>18 the foreclosure important?</p> <p>19 A. To whom?</p> <p>20 Q. To any of the parties.</p> <p>21 A. Well, I can't speak for Super G or Windspeed,</p> <p>22 but for ACET Global, it was an opportunity to eliminate</p> <p>23 half a million dollars of debt.</p> <p>24 Q. Okay. So ACET Global wanted this transaction</p> <p>25 to occur?</p>
Page 15	Page 17
<p>1 Q. And signed in 2018?</p> <p>2 A. Yes.</p> <p>3 Q. Did Tony Ludlow serve on the board of managers</p> <p>4 of Windspeed Trading, LLC?</p> <p>5 A. When those documents were signed, yes.</p> <p>6 Q. Okay. And so he was first named in that</p> <p>7 position in 2018?</p> <p>8 A. Yes.</p> <p>9 Q. To your knowledge, has he ever been removed</p> <p>10 from that position?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Okay. To your knowledge, has he ever stepped</p> <p>13 down from that position?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Do you understand a manager serving on a board</p> <p>16 of managers to have a fiduciary duty to that entity?</p> <p>17 A. In certain instances.</p> <p>18 Q. Okay. Is a fiduciary duty a result of a legal</p> <p>19 relationship?</p> <p>20 A. I'm not sure I understand.</p> <p>21 Q. Okay. Does a fiduciary duty arise out of a</p> <p>22 legal relationship?</p> <p>23 MR. PERRIN: Objection, form.</p> <p>24 If you can answer it, answer it. It's an</p> <p>25 objection, but you can answer it.</p>	<p>1 A. Well, no, I don't -- no, I don't know about</p> <p>2 that. It was occurring whether or not ACET wanted it to</p> <p>3 or not.</p> <p>4 Q. Okay. Why did Baymark Partners believe that</p> <p>5 the foreclosure was important?</p> <p>6 A. I don't know that they thought it was</p> <p>7 important. Again, this was something that was being</p> <p>8 done.</p> <p>9 Q. Okay.</p> <p>10 A. ACET Global didn't really have a say in this.</p> <p>11 Q. Who did have a say in it?</p> <p>12 A. Super G.</p> <p>13 Q. Only Super G?</p> <p>14 A. Yes.</p> <p>15 Q. Was this a contentious event?</p> <p>16 MR. PERRIN: Objection, form.</p> <p>17 A. Well, no one was happy.</p> <p>18 Q. And what do you mean by that?</p> <p>19 A. Well, I'm only speculating, but Super G wasn't</p> <p>20 happy to have a nonperforming loan, ACET wasn't happy at</p> <p>21 getting foreclosed upon.</p> <p>22 Q. What about Baymark?</p> <p>23 A. I feel confident Baymark wasn't happy that</p> <p>24 their investment wasn't doing well.</p> <p>25 Q. And what about Windspeed?</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 A. I don't know what Windspeed was thinking.</p> <p>2 Q. Okay. Why was the bankruptcy of ACET Global</p> <p>3 important?</p> <p>4 A. I don't know. I wasn't involved in the</p> <p>5 bankruptcy.</p> <p>6 Q. No involvement in that?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. At the time of the foreclosure, did</p> <p>9 anyone inform you that the inventory of ACET Global had</p> <p>10 already been transferred to Windspeed's possession?</p> <p>11 A. No, not that I recall.</p> <p>12 Q. Did anyone inform you that Windspeed had</p> <p>13 already been engaged in the sale of that inventory?</p> <p>14 A. Not that I can recall.</p> <p>15 Q. That Windspeed was already engaged in the sale</p> <p>16 of that inventory in 2018?</p> <p>17 A. I don't have any knowledge of that.</p> <p>18 Q. Did anyone inform you that Windspeed was</p> <p>19 already actively using ACET Global's assets?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Would that knowledge have changed your view</p> <p>22 about whether a foreclosure was proper?</p> <p>23 MR. PERRIN: Objection, form.</p> <p>24 A. No. Well, it's not my place to determine</p> <p>25 whether or not a foreclosure was proper.</p>	<p style="text-align: right;">Page 20</p> <p>1 Global?</p> <p>2 A. I don't remember. I think it was David as</p> <p>3 President and Tony was a Vice President, but I don't</p> <p>4 recall exactly.</p> <p>5 Q. Okay. What other attorneys at Hallett & Perrin</p> <p>6 have worked on this matter, and by that, I mean the</p> <p>7 Baymark Partners' transaction involving ACET Global?</p> <p>8 A. You mean the acquisition of it or --</p> <p>9 Q. The acquisition or disposition.</p> <p>10 MR. PERRIN: Objection, form.</p> <p>11 THE WITNESS: Do I answer it anyway?</p> <p>12 MR. PERRIN: Yeah.</p> <p>13 A. So Gordon Foote, who was an attorney here,</p> <p>14 handled the original acquisition of ACET Ventures by</p> <p>15 Baymark or by ACET -- Baymark ACET Holdco.</p> <p>16 Q. Okay.</p> <p>17 A. I think Cassandra Foster, another attorney, did</p> <p>18 some of the finance work with the loan modifications, et</p> <p>19 cetera, with Super G.</p> <p>20 Q. Okay.</p> <p>21 A. I handled the fore -- ACET's interest with</p> <p>22 respect to the foreclosure agreement. There may have</p> <p>23 been associates that worked on the acquisition</p> <p>24 transaction. I wasn't involved in that.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay.</p> <p>2 A. That's Super G's place.</p> <p>3 Q. Okay. Was there a conflict of interest in the</p> <p>4 representation of Baymark Partners' and ACET Global's in</p> <p>5 this transaction?</p> <p>6 A. Which transaction?</p> <p>7 Q. Well, let's talk about in the foreclosure</p> <p>8 process with any of the clients that you represented or</p> <p>9 that Hallett & Perrin represented. Was there a conflict</p> <p>10 of interest?</p> <p>11 A. No.</p> <p>12 Q. So then was there not a -- was there any waiver</p> <p>13 of conflict of interest?</p> <p>14 A. Not with respect to any work that Hallett &</p> <p>15 Perrin did.</p> <p>16 Q. Okay. And Hallett & Perrin didn't seek a</p> <p>17 waiver of conflict of interest from ACET Global?</p> <p>18 A. No. We were representing ACET Global.</p> <p>19 Q. Okay. Was David Hook the President of ACET</p> <p>20 Global?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Was Bill Szeto the President of ACET</p> <p>23 Global?</p> <p>24 A. No. I think he was a CEO.</p> <p>25 Q. Okay. Was Anthony Ludlow the President of ACET</p>	<p style="text-align: right;">Page 21</p> <p>1 A. And I don't recall that I had any associates</p> <p>2 involved in the foreclosure piece of it.</p> <p>3 Q. Okay.</p> <p>4 A. And obviously the Hallett & Perrin attorneys on</p> <p>5 this litigation.</p> <p>6 Q. Okay. Who have you represented out of the</p> <p>7 following parties, or who has Hallett & Perrin</p> <p>8 represented: Super G Capital, LLC?</p> <p>9 A. No.</p> <p>10 Q. Windspeed Trading, LLC?</p> <p>11 A. No.</p> <p>12 Q. ACET Global, LLC?</p> <p>13 A. Yes.</p> <p>14 Q. Baymark ACET Holdco, LLC?</p> <p>15 A. Yes.</p> <p>16 Q. Baymark ACET Direct Invest, LLC?</p> <p>17 A. Yes.</p> <p>18 Q. Baymark Partners?</p> <p>19 A. Yes.</p> <p>20 Q. Baymark Management, LLC?</p> <p>21 A. Yes.</p> <p>22 Q. Baymark Partners Management, LLC?</p> <p>23 A. Yes.</p> <p>24 Q. David Hook?</p> <p>25 A. I'm not sure I represented him personally. I</p>

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<p>1 think I represented the entities.</p> <p>2 Q. Okay. And what about Tony Ludlow?</p> <p>3 A. Same.</p> <p>4 Q. Okay. And when did your representation of</p> <p>5 these parties start?</p> <p>6 A. We would have represented ACET Holdco and ACET</p> <p>7 direct invest and its acquisition of ACET Ventures. I</p> <p>8 guess it's ACET Global also is the company acquiring it.</p> <p>9 And then to the extent that they would have needed legal</p> <p>10 services through the years, we may or may not have been</p> <p>11 involved with that. ACET Global may have gone to other</p> <p>12 counsel for advice through the years, and then we got</p> <p>13 involved again -- or I got involved in the foreclosure</p> <p>14 sale.</p> <p>15 Q. Okay. And I guess has that representation ever</p> <p>16 stopped, or has it just -- there's nothing that's</p> <p>17 brought it to a close, right?</p> <p>18 A. No. I don't think we did that much work for</p> <p>19 them, but it -- I think it was just an open engagement</p> <p>20 that wasn't needed very often.</p> <p>21 Q. Okay. Were you -- I'll show you Exhibit 3.</p> <p>22 (Exhibit No. 3 marked.)</p> <p>23 Q. I'll put it on the screen. Were you involved</p> <p>24 with Tomer Damti's lawsuit against ACET Global? This</p> <p>25 was an employment lawsuit.</p>	<p>1 MR. FREEMAN: The first batch didn't? All</p> <p>2 right. Let me do this, let me go off the record,</p> <p>3 double-check that, and we'll get those over to you. It</p> <p>4 sounds like there's some sort of corruption problem with</p> <p>5 the files.</p> <p>6 MR. PERRIN: That'll be helpful.</p> <p>7 MR. FREEMAN: All right.</p> <p>8 (Break taken from 1:32 p.m. to 1:37 p.m.)</p> <p>9 MR. FREEMAN: Okay. We'll go back on the</p> <p>10 record.</p> <p>11 Q. Ms. Smith, this was an e-mail. This Exhibit 3</p> <p>12 is an e-mail. It should show up on your screen. It was</p> <p>13 from David Hammack to Jon Patton and cc'd several</p> <p>14 individuals, including yourself. The subject line is</p> <p>15 Damti/ACET. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And do you know why you were copied on this</p> <p>18 e-mail?</p> <p>19 A. Can you show me the bottom of the page so I can</p> <p>20 read up?</p> <p>21 Q. Yes, ma'am.</p> <p>22 A. Keep going. That's fine. I assume that I was</p> <p>23 copied on it because I'm the transactional attorney that</p> <p>24 handles ACET stuff.</p> <p>25 Q. Okay. But not involved in the dispute, really?</p>
Page 23	Page 25
<p>1 A. I know that Tomer Damti's employment was</p> <p>2 terminated and that there was a suit involved, but I was</p> <p>3 not involved in the representation.</p> <p>4 Q. Okay.</p> <p>5 A. Again, I'm a transactional attorney.</p> <p>6 Q. Okay. Well, there's this -- so this attorney</p> <p>7 -- or this Exhibit 3, there's an attorney at your</p> <p>8 office, David Hammack, and it looks like you're cc'd on</p> <p>9 some correspondence relating to this with Mr. Damti's</p> <p>10 attorney, Jon Patton.</p> <p>11 MR. PERRIN: Jason, I'm don't want to</p> <p>12 interrupt you here, but this is not the Exhibit 3 we've</p> <p>13 got. Is that what you've got, Brenda, that was</p> <p>14 forwarded? What we've got as Exhibit 3 is -- it comes</p> <p>15 up, but it's --</p> <p>16 MR. FREEMAN: It's not this?</p> <p>17 MR. PERRIN: Well, for some reason, it</p> <p>18 comes up saying your file is not working, and then it</p> <p>19 says --</p> <p>20 MR. FREEMAN: That's not good.</p> <p>21 MR. PERRIN: -- but when I click on it, it</p> <p>22 comes up, it says it cannot open because it's not</p> <p>23 supported by file type or it's been damaged. Now, when</p> <p>24 I do -- on your second batch, they come up, so I'm not</p> <p>25 sure what's happening here.</p>	<p>1 A. No.</p> <p>2 Q. Okay. So I'll also show you what's marked as</p> <p>3 Exhibit 1 to this deposition.</p> <p>4 (Exhibit No. 1 marked.)</p> <p>5 Q. Do you see this document on your screen?</p> <p>6 A. The Super G Capital letter?</p> <p>7 Q. Yes, ma'am.</p> <p>8 A. Yes.</p> <p>9 Q. And are you familiar with this document?</p> <p>10 A. Is this the foreclosure notice?</p> <p>11 Q. Yes, ma'am.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Does it say that it's a notice of</p> <p>14 disposition and sale of collateral?</p> <p>15 A. In the Re line?</p> <p>16 Q. Yes, ma'am.</p> <p>17 A. Yes.</p> <p>18 Q. Is it dated January 31st, 2019?</p> <p>19 A. Yes.</p> <p>20 Q. To ACET Global, LLC?</p> <p>21 A. Yes.</p> <p>22 Q. And the attention of David J. Hook?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And we scroll down below. Is there a cc</p> <p>25 to you, Julie Smith, of Hallett & Perrin, PC?</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And is that, in fact, you?</p> <p>3 A. Yes.</p> <p>4 Q. In receiving this notice, who were you</p> <p>5 representing?</p> <p>6 A. ACET.</p> <p>7 Q. Okay. And why were you copied on this letter?</p> <p>8 A. Because they were sending out a foreclosure</p> <p>9 notice that they were foreclosing on our assets.</p> <p>10 Q. Okay. And did you receive a copy of this</p> <p>11 letter by mail?</p> <p>12 A. Possibly.</p> <p>13 Q. Okay. Does this -- is this a -- in fact, a</p> <p>14 true and correct copy of the letter that was sent by</p> <p>15 Super G?</p> <p>16 A. I have no reason to believe it isn't.</p> <p>17 Q. Okay. Did you discuss this letter with Super G</p> <p>18 counsel?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Did you --</p> <p>21 MR. PERRIN: Jason, excuse me, what exhibit</p> <p>22 number is this? We've now got the new exhibit, so --</p> <p>23 MR. FREEMAN: 1.</p> <p>24 MR. PERRIN: Exhibit 1.</p> <p>25 Is this something you'd be able to look at</p>	<p style="text-align: right;">Page 28</p> <p>1 be with.</p> <p>2 Q. Okay. Were they with anyone else?</p> <p>3 A. My client.</p> <p>4 Q. Okay. And who was that?</p> <p>5 A. ACET.</p> <p>6 Q. Okay. And anyone else?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Okay. What topics would be discussed?</p> <p>9 A. I'm not sure I understand.</p> <p>10 Q. What topics during those discussions would be</p> <p>11 discussed?</p> <p>12 A. The discussions on the notice?</p> <p>13 MR. PERRIN: Are you asking about with</p> <p>14 Mr. Vanderwoude or with the clients?</p> <p>15 MR. FREEMAN: Mr. Vanderwoude.</p> <p>16 A. I think the discussions primarily involved</p> <p>17 around ensuring that we were -- I think the discussions</p> <p>18 primarily revolved around the statutory obligations and</p> <p>19 rights.</p> <p>20 Q. Okay. Whose statutory obligations?</p> <p>21 A. Well, I guess Super G's, but also to make sure</p> <p>22 that, you know, ACET wasn't -- was -- was exercising</p> <p>23 what limited rights it might have.</p> <p>24 Q. Okay. What limited rights did it have?</p> <p>25 A. Virtually none, frankly.</p>
<p style="text-align: right;">Page 27</p> <p>1 in here?</p> <p>2 THE WITNESS: It should be.</p> <p>3 A. All right. I have it.</p> <p>4 Q. Okay. And did you discuss this letter with</p> <p>5 Super G counsel?</p> <p>6 A. Yes.</p> <p>7 Q. And did you discuss this letter with Super G</p> <p>8 counsel prior to receiving it?</p> <p>9 A. Yes.</p> <p>10 Q. What was the nature of that discussion?</p> <p>11 A. They were instituting the rights to foreclose</p> <p>12 under the security and loan -- loan and security</p> <p>13 agreement.</p> <p>14 Q. Okay. And when did you have those discussions?</p> <p>15 A. It would have been around the end of the year,</p> <p>16 I think.</p> <p>17 Q. Okay. Around the end of 2018?</p> <p>18 A. Yes.</p> <p>19 Q. December 20 -- how many discussions were</p> <p>20 there?</p> <p>21 A. Not a ton.</p> <p>22 Q. Okay. Like two or three or --</p> <p>23 A. Yes, probably two or three.</p> <p>24 Q. Okay. And who were those with?</p> <p>25 A. Brian Vanderwoude is who, I guess, they would</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. Were there discussions about anything</p> <p>2 else?</p> <p>3 A. Such as?</p> <p>4 Q. You know, anything else related to the</p> <p>5 forfeiture.</p> <p>6 MR. PERRIN: Objection, form.</p> <p>7 A. Discussions with Brian Vanderwoude?</p> <p>8 Q. Yes, ma'am.</p> <p>9 A. Yeah, we discussed the foreclosure sale</p> <p>10 agreement, we discussed the notice letter and who it</p> <p>11 would need to be sent to.</p> <p>12 Q. Okay. Is that all you remember?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Why did you -- why did y'all discuss the</p> <p>15 foreclosure sale agreement at this time?</p> <p>16 A. They had the right of the loans to the</p> <p>17 agreement to foreclose, and we had the obligation to</p> <p>18 help them with that, not compete it.</p> <p>19 Q. Okay. Now, was ACET Global going to purchase</p> <p>20 the assets?</p> <p>21 A. No. ACET Global was being foreclosed upon. We</p> <p>22 would not have been able to purchase them.</p> <p>23 Q. Was ACET Global selling the assets?</p> <p>24 A. No.</p> <p>25 Q. Why was ACET Global engaged in the discussion</p>

<p style="text-align: right;">Page 30</p> <p>1 about a foreclosure sale agreement?</p> <p>2 A. Because we wanted to make sure that the half a</p> <p>3 million dollar loan we had with Super G was forgiven as</p> <p>4 part of this process.</p> <p>5 Q. Okay.</p> <p>6 A. A big (indiscernible).</p> <p>7 Q. Okay. And how did the foreclosure sale</p> <p>8 agreement accomplish that?</p> <p>9 A. The buyer agreed to assume the note --</p> <p>10 Q. Okay.</p> <p>11 A. -- the basic note.</p> <p>12 Q. Who was the buyer?</p> <p>13 A. Windspeed.</p> <p>14 Q. Okay. This January 31st, 2019, letter from</p> <p>15 Super G, it's reflected on Exhibit 1, was this sent to</p> <p>16 Tomer Damti?</p> <p>17 A. I believe it was.</p> <p>18 Q. Okay. And why was it sent to Tomer Damti?</p> <p>19 A. I think to see if he would be interested in</p> <p>20 acquiring the assets.</p> <p>21 Q. Okay.</p> <p>22 A. To make sure he knew about the foreclosure and</p> <p>23 he could exercise his rights as -- to purchase the</p> <p>24 assets, if he so chose.</p> <p>25 Q. Okay. Did you discuss with Mr. Vanderwoude</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. Besides this particular matter, have you</p> <p>2 ever been involved in reviewing a foreclosure notice?</p> <p>3 A. No.</p> <p>4 Q. A foreclosure notice to your client?</p> <p>5 A. No.</p> <p>6 Q. So this is the only time that you've done that?</p> <p>7 A. For ACET, yes.</p> <p>8 Q. Okay. Let me show you what's marked as</p> <p>9 Exhibit 2, Ms. Smith.</p> <p>10 (Exhibit No. 2 marked.)</p> <p>11 Q. Are you familiar with this document?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And what is this?</p> <p>14 A. The foreclosure sale agreement between</p> <p>15 Windspeed and Super G.</p> <p>16 Q. Okay. Is it dated March 1st, 2019?</p> <p>17 A. Yes.</p> <p>18 Q. And it's between Windspeed Trading as the buyer</p> <p>19 and Super G Capital as the seller?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Was anyone else a party to this</p> <p>22 document, that you recall?</p> <p>23 A. No. It's a two-party agreement.</p> <p>24 Q. Okay. Just between Windspeed and Super G?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 whether Tomer Damti would likely seek to purchase the</p> <p>2 assets?</p> <p>3 A. I don't recall if I spoke with him about that.</p> <p>4 Q. Okay. Don't recall any discussions regarding</p> <p>5 that topic?</p> <p>6 A. No. No.</p> <p>7 Q. Did you believe it was likely that Mr. Damti</p> <p>8 would try to seek to purchase the assets?</p> <p>9 A. I didn't have an opinion about that.</p> <p>10 Q. Okay. Who did you believe would actually</p> <p>11 acquire the assets?</p> <p>12 A. I think that, due to the foreclosure sale</p> <p>13 process, it appeared that Windspeed would be the one</p> <p>14 that wanted to do that.</p> <p>15 Q. Okay. And were you involved at all in drafting</p> <p>16 this notice of disposition and sale of collateral?</p> <p>17 A. I didn't draft it. I was involved in it and</p> <p>18 then I read it and reviewed it. I was not the -- I did</p> <p>19 not initially draft it.</p> <p>20 Q. Okay. Did you offer suggested revisions to the</p> <p>21 document?</p> <p>22 A. Not meaningful ones, if I did.</p> <p>23 Q. Okay. Did you provide any other input about</p> <p>24 the content of this document?</p> <p>25 A. I don't remember doing so.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Okay. And do you represent either of those</p> <p>2 parties?</p> <p>3 A. No.</p> <p>4 Q. Okay. Look to page 12 of this document,</p> <p>5 Ms. Smith. You're listed as, under the notices</p> <p>6 paragraph, as the notice attorney for notices to</p> <p>7 Windspeed Trading.</p> <p>8 MR. PERRIN: Objection, form.</p> <p>9 Q. Is that you?</p> <p>10 A. Yes, that's me.</p> <p>11 Q. Okay. And for this notice, who are you</p> <p>12 representing?</p> <p>13 A. Baymark.</p> <p>14 Q. Okay. Were you involved in drafting this</p> <p>15 document?</p> <p>16 A. I reviewed the document.</p> <p>17 Q. Okay. Did you offer any suggested revisions?</p> <p>18 A. Yes.</p> <p>19 Q. Red-lines?</p> <p>20 A. Yes, if I had offered any revisions, I would</p> <p>21 have red-lined them.</p> <p>22 Q. Okay. So you engaged in drafting and revisions</p> <p>23 with other attorneys?</p> <p>24 A. Yes.</p> <p>25 Q. Who else was involved?</p>

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<p>1 A. Brian Vanderwoude for Super G and Alex Szeto 2 with Bill Szeto. 3 Q. Okay. And when did you first begin drafting 4 this document? 5 A. I think I got the initial copy of it in the 6 middle of December. 7 Q. Okay. December 2018? 8 A. Correct. 9 Q. Okay. And again, this document is dated 10 March 1st, 2019 -- 11 A. Yes. 12 Q. -- is that right? When was this document 13 actually signed? 14 A. I believe the end of March, to be effective as 15 of March 1st. 16 Q. Okay. So does it reflect a date that was 17 earlier than the date it was actually executed? 18 A. Does the document reflect a date that was 19 earlier than the day it was executed? 20 Q. Yes, ma'am. 21 A. Yes. 22 Q. And was that done intentionally? 23 A. Yes. 24 Q. And so why is it backdated? 25 MR. PERRIN: Objection, form.</p>	<p>1 uncommon to backdate something. 2 Q. Okay. And when we refer to backdating, I'm not 3 referring to effective dating where it's made clear that 4 it's signed after the fact but made effective as of an 5 earlier date. I'm referring to reflecting a date that's 6 earlier than it's actually signed and executed. Is that 7 what you mean as well? 8 A. I -- say that again. I'm not sure I understood 9 you. 10 Q. When you say -- you know, when you say many 11 firms engage in backdating, are you referring to 12 effective dating, or are you referring to backdating? 13 A. I see those as the same thing. I mean, I think 14 the better way to do it is to date it effective as of, 15 but that doesn't always happen that way. I don't think 16 it changes the intent. 17 Q. Okay. Why was the date of this transaction 18 important? 19 A. I don't know that it was. 20 Q. Okay. So why not use the actual date? 21 A. I don't know. 22 Q. Okay. The document states that the debtor 23 currently owes the seller the sum of 516,844.86. I'll 24 take you to the page reflecting this. Where did you 25 obtain this figure?</p>
Page 35	Page 37
<p>1 A. I went on maternity -- family medical leave 2 right about this time, and I think it got kind of lost 3 in the shuffle. I adopted two children, and I kinda was 4 out very quickly and without anybody's forewarning. It 5 got lost in the shuffle, and when I came back, we 6 finalized the execution of it. 7 Q. Okay. Other than this transaction, have you 8 ever backdated a document? 9 MR. PERRIN: Objection, form. 10 A. Yes. 11 Q. Okay. Is that a standard practice? 12 A. I don't know about standard, but it's certainly 13 not uncommon. 14 Q. At Hallett & Perrin? 15 A. Anywhere. 16 Q. What other firms have you worked at? 17 A. Gibson Dunn & Crutcher. 18 Q. Okay. And in your experiences that backdating 19 is a standard practice? 20 MR. PERRIN: Objection, form. 21 A. I don't know that I would say standard, but 22 it's not uncommon. 23 Q. Okay. 24 A. A lot of deals that we do, we're working with 25 other attorneys representing the other side, it's not</p>	<p>1 A. I think Super G. 2 Q. Super G provided it? 3 A. Uh-huh. 4 Q. Okay. And you represented ACET Global? 5 A. Yes. 6 Q. Okay. And did you represent Baymark ACET 7 Holdco as well? 8 A. Yes. 9 Q. Okay. So you ultimately represented the 10 company that was foreclosed upon in this set of 11 transactions, correct? 12 A. Yes. 13 Q. Were you involved in the formation of 14 Windspeed? 15 A. No. 16 Q. No -- 17 A. It was a formed company. 18 Q. Okay. Did you assist in drafting the operating 19 agreement? 20 A. I amended and restated the company agreement. 21 Q. Okay. So did you draft the amended and 22 restated company agreement? 23 A. I took the initial draft and then we all 24 negotiated and drafted it -- 25 Q. Okay. And who is --</p>

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<p>1 A. -- all three parties.</p> <p>2 Q. Who is all three parties?</p> <p>3 A. Super G, Windspeed, and Baymark.</p> <p>4 Q. Okay. Were you involved in drafting the</p> <p>5 warrant purchase agreements?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And did Hallett & Perrin, in fact, draft</p> <p>8 those warrant purchase agreements?</p> <p>9 A. We did the initial draft which, again, was</p> <p>10 circulated to everyone for comment and revision.</p> <p>11 Q. Okay. And did Hallett & Perrin also draft the</p> <p>12 warrants themselves?</p> <p>13 A. Yes, same.</p> <p>14 Q. Okay. So all of that is Hallett & Perrin</p> <p>15 drafted the amended and restated company agreement of</p> <p>16 Windspeed Trading, LLC, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And Hallett & Perrin drafted the warrant</p> <p>19 purchase agreements with respect to Windspeed Trading,</p> <p>20 LLC?</p> <p>21 A. Yes.</p> <p>22 Q. And the warrants?</p> <p>23 A. Yes. But to be clear, it was a tri-party</p> <p>24 effort. All three attorneys were involved in this</p> <p>25 process. I took the initial stab at it, but each</p>	<p>1 Q. Yes, ma'am.</p> <p>2 A. It would either have been Matt Denegre or Tony</p> <p>3 Ludlow.</p> <p>4 Q. Okay. What about Mr. Hook?</p> <p>5 A. I don't recall him being involved.</p> <p>6 Q. Mr. Szeto?</p> <p>7 A. No, he wasn't my client.</p> <p>8 Q. Or Steven Bellah?</p> <p>9 A. Definitely not my client.</p> <p>10 Q. Okay. And what was Windspeed's relationship to</p> <p>11 ACET Global?</p> <p>12 A. None, that I'm aware of.</p> <p>13 Q. What did you understand to be the purpose of</p> <p>14 forming Windspeed Trading?</p> <p>15 A. I have no idea.</p> <p>16 Q. Did you understand it to be the ACET Newco?</p> <p>17 A. No.</p> <p>18 Q. Was it formed for the purpose of acquiring</p> <p>19 ACET's assets?</p> <p>20 MR. PERRIN: Objection, form.</p> <p>21 A. I don't know why it was formed.</p> <p>22 Q. Of continuing ACET's business?</p> <p>23 A. I wasn't part of those discussions.</p> <p>24 Q. Okay. Ms. Smith, I'm going to put on the</p> <p>25 screen what's marked as Exhibit 4.</p>
Page 39	Page 41
<p>1 attorney and each side had comments and revisions to it.</p> <p>2 Q. Okay.</p> <p>3 A. And it was negotiated among all three.</p> <p>4 Q. Well, who was Hallett & Perrin representing in</p> <p>5 this process?</p> <p>6 A. With the Windspeed company agreement and</p> <p>7 warrants?</p> <p>8 Q. Yes, ma'am.</p> <p>9 A. Baymark.</p> <p>10 Q. Is that Baymark Partners?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. Baymark Partners Management or -- yeah, Baymark</p> <p>14 Partners Management, I think.</p> <p>15 Q. Is that who it's billed under?</p> <p>16 A. I think so, yeah.</p> <p>17 Q. Okay. Who informed you of Windspeed?</p> <p>18 MR. PERRIN: I would instruct the witness,</p> <p>19 to the extent this calls for attorney-client</p> <p>20 communications that -- privileged communications, if you</p> <p>21 can answer that without going into privileged</p> <p>22 communications, you may.</p> <p>23 A. My client.</p> <p>24 Q. Okay. And who was that?</p> <p>25 A. What person?</p>	<p>1 (Exhibit No. 4 marked.)</p> <p>2 Q. Can you see this document?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And are you familiar with this exhibit?</p> <p>5 A. No.</p> <p>6 Q. Okay. Does this on top appear to be an e-mail</p> <p>7 from Matt Denegre to Tony Ludlow?</p> <p>8 A. It appears to be.</p> <p>9 Q. Okay. And appear to be dated on October 7th,</p> <p>10 2018?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And is the subject line ACET Newco?</p> <p>13 A. Yes.</p> <p>14 Q. What did you understand that to mean?</p> <p>15 A. I wasn't a party to this e-mail.</p> <p>16 Q. Okay. Have you ever referred to Windspeed as</p> <p>17 the ACET Newco?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. Okay. And what does Mr. Denegre say here? It</p> <p>20 says, these are the formation documents for ACET Newco</p> <p>21 that Bill had his son draft up no charge which I can</p> <p>22 send to Julie. Bill's son is an M&A attorney. The</p> <p>23 operating agreement will certainly have changes and may</p> <p>24 be a complete redo.</p> <p>25 Did I read that correctly?</p>

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1 A. Yes.
2 Q. Okay. Are you the Julie he's referring to
3 here?
4 A. I assume so.
5 Q. And did you redo the operating agreement?
6 A. I did.
7 Q. And who paid for your fees to draft the
8 operating agreement for Windspeed Trading?
9 A. Baymark.
10 Q. Okay. And Baymark Partners?
11 A. Yes.
12 Q. Okay. And was it a complete redo?
13 A. I think it was.
14 Q. Okay. And what changes did you make to this
15 document that was attached?
16 A. Well, as I recall, it was set up -- I haven't
17 looked at the document since that time, but I think it
18 was set up as a single member LLC which is a pretty
19 limited company agreement, and we needed it to be a
20 company agreement among three parties, so we needed to
21 add board positions, transfer rights and restrictions,
22 that kind of stuff.
23 Q. Okay. Why were those changes made?
24 A. Well, when you have a single member LLC, the
25 company agreement is very straightforward and very

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1 simple, five, ten pages because you're the sole member,
2 you're not having to negotiate anything with anybody.
3 When you start bringing in additional members into an
4 LLC, there are provisions that you need to negotiate
5 amongst yourselves about how the company will be
6 governed, all of that stuff within the company
7 agreement.
8 So it's not at all any -- it's very normal
9 that when a company goes from a single member LLC to one
10 with multiple members that you have to revise the
11 company agreement to reflect the rights and obligations
12 of the members among themselves.
13 Q. Okay.
14 A. You don't have to do that in a single member
15 LLC because there's nobody else but one member.
16 Q. Who did you discuss those changes with?
17 A. Alex Szeto who was representing Windspeed, and
18 then I don't think Super G had attorneys at that point.
19 I think it was Bellah.
20 Q. Okay.
21 A. Yeah.
22 Q. Okay. And who had requested the changes?
23 A. I don't know who I -- I'm not sure
24 anybody requested them. I think it might have just been
25 known that they needed to be made. I don't know who

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1 requested it specifically.
2 Q. Okay. How many drafts were there of the
3 Windspeed -- Windspeed's amended and restated company
4 agreement?
5 A. I'm not sure. Maybe four or five. I don't
6 remember.
7 Q. Okay. Ms. Smith, I'll show you what's marked
8 as Exhibit 5.
9 (Exhibit No. 5 marked.)
10 Q. Do you know this document?
11 A. Yes.
12 Q. And is this an e-mail from you?
13 A. Yes.
14 Q. And it's to Matthew Denegre, William Szeto, and
15 Alex Szeto?
16 A. Yes.
17 Q. On October 17th, 2018?
18 A. Yes.
19 Q. And subject line is Windspeed A&R Company
20 Agreement?
21 A. Yes.
22 Q. Okay. And below, do you state, attached is a
23 draft of the amended and restated company agreement for
24 Windspeed Trading, L -- PL -- excuse me, LLC; is that
25 correct?

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1 A. Yes.
2 Q. At this time, did you believe that Windspeed
3 would acquire the assets of ACET Global?
4 A. I don't -- yeah, I don't recall.
5 Q. Okay. Who gave you instructions about the
6 company agreement?
7 A. Baymark.
8 Q. Okay. Is that Baymark Partners?
9 A. Yes.
10 Q. Okay. And was it Baymark Partners that told
11 you the provisions they wanted in it?
12 A. I think it was Baymark Partners Management that
13 executed this company agreement.
14 Q. Okay. So who was it that gives you the -- gave
15 you the instructions about what they wanted in it?
16 A. Matt Denegre and Tony Ludlow.
17 Q. Okay. And when they interact with you, who are
18 they generally interacting on behalf of?
19 A. In this instance, Baymark Partners Management.
20 Q. Okay. Did you discuss this agreement with
21 Super G Capital?
22 A. I must have, yes.
23 Q. Okay. Was this agreement actually negotiated?
24 A. Yes.
25 Q. Okay. What were you trying to accomplish with

<p style="text-align: right;">Page 46</p> <p>1 this agreement?</p> <p>2 A. Well, as I said before, it was -- we were</p> <p>3 having to revise a single member LLC agreement to</p> <p>4 contemplate more than one member, so we were trying to</p> <p>5 just outline the rights and responsibilities of each of</p> <p>6 the members.</p> <p>7 Q. Okay. How did this agreement advance the</p> <p>8 interests of ACET Global, LLC?</p> <p>9 A. I don't think ACET Global had anything to do</p> <p>10 with this.</p> <p>11 Q. So this didn't protect the interests of ACET</p> <p>12 Global?</p> <p>13 MR. PERRIN: Objection, form.</p> <p>14 A. No.</p> <p>15 Q. Okay. In this agreement itself, there's a</p> <p>16 provision 3.2 that provides for no control by members.</p> <p>17 Do you see that on the screen?</p> <p>18 A. I do.</p> <p>19 Q. Why was there a provision for no control by</p> <p>20 members?</p> <p>21 A. It's a very standard provision in a company</p> <p>22 agreement. The TBOC allows managers or members to</p> <p>23 control the company. In this instance, we had a board</p> <p>24 of managers who wanted to make it clear that the members</p> <p>25 did not have control.</p>	<p style="text-align: right;">Page 48</p> <p>1 Matthew Denegre, William Szeto, and Alex Szeto?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And does it state the subject line,</p> <p>4 Windspeed Company Agreement?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And attached to it, are there several</p> <p>7 documents that you had drafted or Hallett & Perrin had</p> <p>8 drafted?</p> <p>9 A. I believe it probably was a Word version of a</p> <p>10 clean document and a red-line showing the changes made</p> <p>11 to the previous version.</p> <p>12 Q. Okay. Okay. And Ms. Smith, can you see what's</p> <p>13 marked as Exhibit 7?</p> <p>14 A. I don't see it marked as Exhibit 7, but I see</p> <p>15 something on your screen.</p> <p>16 Q. Well, let me ask you a question, then. Was the</p> <p>17 warrant agreement related to the formation of Windspeed</p> <p>18 Trading?</p> <p>19 MR. PERRIN: Objection, form.</p> <p>20 A. I believe Windspeed was already formed when</p> <p>21 we --</p> <p>22 Q. Okay.</p> <p>23 A. -- started doing the warrant purchase</p> <p>24 agreement.</p> <p>25 Q. Who requested a warrant purchase agreement?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. And so on that board of managers, you</p> <p>2 provide for the appointment or entitlement to appoint</p> <p>3 one manager of the board of direct -- of managers known</p> <p>4 as the Baymark manager?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And did you also provide Super G with</p> <p>7 entitlement to appoint one manager to the board of</p> <p>8 managers who would be known as the Super G manager?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Are those --</p> <p>11 A. Szeto also was a -- had a manager on the board.</p> <p>12 Q. Right. Are those common provisions?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. It's the kind of thing that Hallett &</p> <p>15 Perrin does every day?</p> <p>16 A. In company agreements?</p> <p>17 Q. Uh-huh.</p> <p>18 A. Yes. Very common to set up a board of managers</p> <p>19 in a company agreement.</p> <p>20 Q. Okay. Ms. Smith, I'll show you what's marked</p> <p>21 as Exhibit 6.</p> <p>22 (Exhibit No. 6 marked.)</p> <p>23 Q. And do you recognize this document?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And is this an e-mail from you to</p>	<p style="text-align: right;">Page 49</p> <p>1 A. I don't know what entity. The business points</p> <p>2 were primarily resolved before the attorneys got</p> <p>3 involved. I don't know which party was the one that set</p> <p>4 up the capital structure.</p> <p>5 Q. Okay. What was the warrant agreement intended</p> <p>6 to accomplish?</p> <p>7 A. I'm not sure.</p> <p>8 Q. And --</p> <p>9 A. Super G and Baymark an opportunity to acquire</p> <p>10 equity interests.</p> <p>11 Q. Okay. Have you ever drafted a warrant</p> <p>12 agreement like that before?</p> <p>13 A. You mean for other clients?</p> <p>14 Q. Yes, ma'am.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And now I'm showing you what's been</p> <p>17 marked electronically as Exhibit 7.</p> <p>18 (Exhibit No. 7 marked.)</p> <p>19 A. Okay.</p> <p>20 Q. Do you see the document on your screen?</p> <p>21 A. Yes.</p> <p>22 Q. And are you familiar with this document?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And is this an e-mail from you to Matt</p> <p>25 Denegre, William Szeto, and Alexander Szeto?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Yes.</p> <p>2 Q. And does it bear the subject line, Windspeed</p> <p>3 Warrant Purchase Agreement and Warrant?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And below, do you state, attached is a</p> <p>6 proposed draft of the warrant purchase agreement and</p> <p>7 form of warrant to be used in connection with the</p> <p>8 formation of Windspeed Trading, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did you understand these warrant</p> <p>11 agreements documents to be related to the formation of</p> <p>12 Windspeed Trading?</p> <p>13 A. No. I think Windspeed Trading was already</p> <p>14 formed when all of this occurred -- when this -- these</p> <p>15 documents were drafted.</p> <p>16 Q. Okay. Did you understand these to be in</p> <p>17 connection with the formation of Windspeed Trading, LLC?</p> <p>18 A. I don't have that understanding one way or the</p> <p>19 other. It was my understanding Windspeed Trading was an</p> <p>20 existing company and that we were revising the company</p> <p>21 agreement to reflect the business deal among the</p> <p>22 parties.</p> <p>23 Q. Okay. But did you, in fact, back on</p> <p>24 October 15th, 2018, write that you were providing these</p> <p>25 warrant purchase agreement documents in connection with</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And this warrant purchase agreement states that</p> <p>2 it's entered into between Windspeed Trading, LLC and</p> <p>3 Super G/Baymark Partners, LLC. Is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And did you understand that you were performing</p> <p>6 this work on behalf of Baymark Partners?</p> <p>7 A. Yes. This is a form of agreement, so we were</p> <p>8 drafting a form that would be used by both part -- both</p> <p>9 recipients of the warrant, and that's just a placeholder</p> <p>10 to indicate that we would either put Super G's</p> <p>11 information in there if this was the Super G purchase</p> <p>12 agreement, or Baymark's information in there if it</p> <p>13 ultimately was Baymark's purchase agreement.</p> <p>14 Q. Okay. And if you'll look down in the warrant</p> <p>15 section of the agreement, was there, in fact, an</p> <p>16 exercise price of \$100 to exercise the warrants?</p> <p>17 A. Yes.</p> <p>18 Q. And on the exercise of those warrants, would it</p> <p>19 entitle the warrant holder to own 40 percent of the</p> <p>20 outstanding membership interests of Windspeed Trading?</p> <p>21 A. Yes.</p> <p>22 Q. And those warrants' rights were drafted to be</p> <p>23 provided to both Super G Capital and to Baymark</p> <p>24 Partners; is that correct?</p> <p>25 A. This was a form of an agreement that was going</p>
<p style="text-align: right;">Page 51</p> <p>1 the formation of Windspeed Trading, LLC?</p> <p>2 A. It appears that that's what I wrote in the</p> <p>3 e-mail.</p> <p>4 Q. Does this e-mail -- does this document appear</p> <p>5 to be a true and correct copy of what it purports to be?</p> <p>6 A. Yes. I mean, clearly, I was misstating there.</p> <p>7 We did not -- I did not form Windspeed.</p> <p>8 Q. If you'll look below here, there's a document</p> <p>9 that states that it's a warrant to purchase agreement</p> <p>10 interest in Windspeed Trading, LLC, and this bears a</p> <p>11 marker on top that says H&P draft 10/15/18. What does</p> <p>12 that mean?</p> <p>13 A. On the tractional practices, you frequently put</p> <p>14 a header -- a draft header at the top to keep track of</p> <p>15 what version and from whom it is being sent, so that</p> <p>16 would be something that we would have -- either the</p> <p>17 initial draft or a rewrite of, you know, provision to</p> <p>18 it, existing document, I would go in there and put H&P</p> <p>19 draft and the date so people knew who the comments were</p> <p>20 from and the date.</p> <p>21 Q. Okay. Okay. And going down into the document</p> <p>22 here, on the warrant purchase agreement itself, it also</p> <p>23 bears the same notation on the top right, H&P draft,</p> <p>24 10/15/2018.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 53</p> <p>1 to be used for both.</p> <p>2 Q. Okay. And who paid the legal fees to draft the</p> <p>3 warrant agreement?</p> <p>4 A. Baymark.</p> <p>5 Q. Is that Baymark Partners?</p> <p>6 A. Baymark Partners Management, I think, was the</p> <p>7 entity.</p> <p>8 Q. Okay. Ms. Smith, I'll show you what's marked</p> <p>9 as Exhibit 8.</p> <p>10 (Exhibit No. 8 marked.)</p> <p>11 Q. Do you see that document?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And is this -- are you familiar with</p> <p>14 this document or any part of it?</p> <p>15 A. It looks like it was a forward of an e-mail I</p> <p>16 sent of the e-mail we just looked at.</p> <p>17 Q. Okay. And that was -- your e-mail was sent to</p> <p>18 Matt Denegre, William Szeto, Alex Szeto, and is that</p> <p>19 all?</p> <p>20 A. It looks like it.</p> <p>21 Q. It appears to -- one of them -- Matt Denegre</p> <p>22 forwarded that to Steven Bellah?</p> <p>23 A. Yes.</p> <p>24 Q. And do you know who Steven Bellah is?</p> <p>25 A. Yeah, he was a -- one of the lenders at Super</p>

<p style="text-align: right;">Page 54</p> <p>1 G. 2 Q. Okay. 3 A. It looks like Matt forwarded this to the 4 business people involved. 5 Q. Okay. One second. Did you draft the initial 6 foreclosure sale agreement? 7 A. No. 8 Q. I'll show you what's marked as Exhibit 10. 9 (Exhibit No. 10 marked.) 10 Q. Do you see that document? 11 A. Yes. 12 Q. And are you familiar with that document? 13 A. The e-mail? 14 Q. Yes, ma'am. 15 A. It looks like an e-mail I sent to Brian 16 Vanderwoude. 17 Q. Okay. It's an e-mail you sent to Brian 18 Vanderwoude and Jamie Whatley? 19 A. Yes. 20 Q. Okay. And cc'd Michelle Shriro? 21 A. Shriro (different pronunciation). 22 Q. Shriro? 23 A. Yes. 24 Q. On December 19th, 2018? 25 A. Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. PERRIN: Are you talking about the 2 e-mail? 3 MR. FREEMAN: Yes, the document, the 4 e-mail. 5 A. Yes. 6 Q. In your e-mail, you also stated, most of the 7 changes were to eliminate the bifurcated closing (it is 8 my understanding we will sign and close on the same day 9 and clean up the document). There were some substantive 10 changes as well, and I'm happy to discuss those if you 11 have any questions. 12 In stating that, you indicated you believed 13 y'all would sign and close on the same day. What 14 exactly did you mean? 15 A. Well, I think that I meant that the agreement 16 would be executed and the transaction closed on the same 17 day as opposed to a delayed closing or bifurcated 18 closing. 19 Q. Okay. And why would it have been done that 20 way? 21 A. Lots of reasons. 22 Q. What are they? 23 A. Oh, I can't speculate on what all they might 24 be. A simultaneous closing document is a little bit 25 more straightforward, a little bit simpler, it doesn't</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Subject line, Super G Windspeed-Foreclosure 2 Sale Agreement? 3 A. Yes. 4 Q. Okay. And do you say that, attached is a 5 revised draft of the foreclosure sale agreement? 6 A. Yes. 7 Q. Okay. And this document that's attached, the 8 numbering convention, is that a convention that's used 9 by Hallett & Perrin? 10 A. Yes, I would have received a draft from a -- if 11 I receive a draft of an agreement from another party, I 12 save it onto our system, and then the system assigns it 13 this number. 14 Q. Okay. So this foreclosure sale agreement was 15 on Hallett & Perrin's document system? 16 A. Yes. 17 Q. Okay. How many drafts of this document did you 18 make? 19 A. Well, that's Version 3, so I assume Version 1 20 would have come from -- well, Dorsey. I don't know what 21 happened to Version 2, so there's at least three 22 versions. 23 Q. Okay. And does this document appear to be a 24 true and correct copy of the document that's reflected 25 here?</p>	<p style="text-align: right;">Page 57</p> <p>1 require as many sections, i.e., you know, less to 2 negotiate. 3 Q. Okay. Well, in terms of your understanding 4 that this would be signed and closed on the same day, 5 what gave you that understanding? 6 A. I don't -- I don't -- I'm not sure I understand 7 your question. 8 Q. Or what was it that made you believe that it 9 would be signed and closed on the same day? 10 A. I don't recall what gave me that impression. 11 Q. Okay. And was your client signing this 12 document? 13 A. No. 14 Q. So you didn't have a client that was going to 15 be executing the foreclosure sale agreement? 16 A. No. 17 Q. And what did you mean by, we will sign and 18 close on the same day? 19 A. I think collectively, the parties will close. 20 We, all of us involved in this foreclosure. 21 Q. Okay. Was your client signing any of the 22 agreements that were attached to this e-mail? 23 A. No, but stood to benefit greatly from this all 24 going through smoothly. 25 Q. Your clients, Baymark Partners, stood to</p>

<p style="text-align: right;">Page 58</p> <p>1 benefit greatly?</p> <p>2 A. ACET.</p> <p>3 Q. ACET Global? What happened to ACET after this?</p> <p>4 A. Well, they eliminated a half a million dollars</p> <p>5 in debt.</p> <p>6 Q. Did they thrive after that?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Okay. How exactly was this whole foreclosure</p> <p>9 transaction going to be so wonderful for ACET Global?</p> <p>10 MR. PERRIN: Objection, form.</p> <p>11 A. Well, they had a half a million dollars in</p> <p>12 secured liabilities that they were going to be able to</p> <p>13 be discharged as a part of this. Certainly that cleaned</p> <p>14 up the balance sheet a bit, maybe not enough to save</p> <p>15 them, but it definitely was a step in the right</p> <p>16 direction.</p> <p>17 Q. Right. So everybody was pretty excited after</p> <p>18 being foreclosed upon?</p> <p>19 A. I'm not sure I know what their mental state of</p> <p>20 mind was, but I don't think anybody was excited with how</p> <p>21 this business performed.</p> <p>22 Q. Okay. So it'd be nothing to congratulate about</p> <p>23 at the end of this?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Okay. Now, this structure, your understanding</p>	<p style="text-align: right;">Page 60</p> <p>1 about the other 3.2 million that was owed to Tomer</p> <p>2 Damti?</p> <p>3 A. What about it?</p> <p>4 Q. Well, I mean, how much did we really free up</p> <p>5 here?</p> <p>6 MR. PERRIN: Objection, form.</p> <p>7 A. I don't understand.</p> <p>8 Q. Well, I mean, what about the additional</p> <p>9 3.2 million that ACET Global owed to Tomer Damti?</p> <p>10 A. What about it? I'm not trying to be snarky,</p> <p>11 I'm not clear on what you're asking of me.</p> <p>12 Q. I'm just trying to reconcile this irrational</p> <p>13 exuberance that ACET Global felt that being foreclosed</p> <p>14 upon with the \$3.2 million secured note that was still</p> <p>15 sitting on its balance sheet.</p> <p>16 MR. PERRIN: Objection, form.</p> <p>17 A. Who had used the word "irrational exuberance"?</p> <p>18 Q. I -- you know, I'm just trying to understand</p> <p>19 why ACET Global would be happy about this.</p> <p>20 A. I'm not sure happy -- I don't know what they</p> <p>21 felt about this, but an outcome of relieving yourself of</p> <p>22 getting rid of a half a million dollars in debt is not a</p> <p>23 bad outcome.</p> <p>24 Q. But might it be a bad outcome if it comes at</p> <p>25 the expense of millions of dollars of assets?</p>
<p style="text-align: right;">Page 59</p> <p>1 of this, eliminating the bifurcated closing and signing</p> <p>2 closing on the same day, that didn't turn out to be the</p> <p>3 way that this transaction took place, did it?</p> <p>4 A. No.</p> <p>5 Q. And why was the structure changed?</p> <p>6 MR. PERRIN: Objection, form.</p> <p>7 A. Originally, I think the parties had</p> <p>8 contemplated signing this agreement and then Super G</p> <p>9 would send out the notice, but the way that it actually</p> <p>10 played out, Super G sent the notice before the agreement</p> <p>11 was signed, and so there wasn't any longer a need for</p> <p>12 bifurcated closing.</p> <p>13 Q. Okay. And were you -- you were understanding</p> <p>14 by this that ACET Global was going to be excited to get</p> <p>15 rid of all of its liability?</p> <p>16 MR. PERRIN: Objection, form.</p> <p>17 A. I mean, I don't know about excited. It</p> <p>18 wasn't a -- being foreclosed upon is certainly not a</p> <p>19 cause for celebration.</p> <p>20 Q. But getting rid of a half a million dollar debt</p> <p>21 was a pretty good thing?</p> <p>22 A. Yeah, it was a good thing.</p> <p>23 Q. And freed it up --</p> <p>24 A. Presumably.</p> <p>25 Q. -- is that right? What about the other -- what</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. PERRIN: Objection, form.</p> <p>2 A. Millions of dollars of assets owned by whom?</p> <p>3 Q. ACET Global.</p> <p>4 A. I don't believe they had millions of dollars of</p> <p>5 assets.</p> <p>6 Q. Did you ever personally inspect them?</p> <p>7 A. No.</p> <p>8 Q. So how do you know what assets ACET Global had?</p> <p>9 A. Well, I --</p> <p>10 Q. You don't, in fact, know, do you?</p> <p>11 A. Say it again.</p> <p>12 Q. You don't, in fact, know, do you?</p> <p>13 A. You're right, I don't.</p> <p>14 Q. So you didn't know what assets ACET Global</p> <p>15 actually had?</p> <p>16 A. I know what assets that -- I know with the</p> <p>17 value that the bank and ACET believed the assets were --</p> <p>18 just were.</p> <p>19 Q. And by, the bank, do you mean Super G Capital?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And by your statement that you know the</p> <p>22 value that Super G and ACET attributed to it, what are</p> <p>23 you referring to?</p> <p>24 A. What do you mean?</p> <p>25 Q. How do you know what value they attributed to</p>

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<p>1 it?</p> <p>2 A. I think it's in one of the documents. I think</p> <p>3 it's in the recitals of one of the documents.</p> <p>4 Q. Of what documents? To what transaction?</p> <p>5 A. I don't have the document in front of me, but I</p> <p>6 think the foreclosure sale agreement might denote the</p> <p>7 value of the assets being foreclosed upon.</p> <p>8 Q. Okay. So does it denote the value of the</p> <p>9 assets being foreclosed upon or the outstanding balance</p> <p>10 that ACET Global owed to Super G Capital?</p> <p>11 A. I don't have the agreement in front of me, but</p> <p>12 I believe both of those numbers are in that document?</p> <p>13 Q. Okay. But would you agree that those two</p> <p>14 things are not one and the same?</p> <p>15 A. No -- yes, they are not the same numbers. One</p> <p>16 is a -- the amount of debt, and one is the estimated</p> <p>17 firm work value of assets.</p> <p>18 Q. Okay. Now, on this document, this Exhibit 10</p> <p>19 that we were looking at --</p> <p>20 A. Yes.</p> <p>21 Q. -- that you sent on December 19th, 2018,</p> <p>22 correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Okay. Second 2.3 of the foreclosure sale</p> <p>25 agreement that is attached, I'm going to ask you to take</p>	<p>1 any other party, whether known or unknown, contingent,</p> <p>2 or absolute or otherwise, and whether relating to the</p> <p>3 purchased assets, the excluded assets, or otherwise,</p> <p>4 including but not limited to any debt, obligation,</p> <p>5 responsibility, or liability with respect to tax,</p> <p>6 employment, benefits, personal injury, or products,</p> <p>7 liability claims, equipment leases, licensed agreements,</p> <p>8 or contracts.</p> <p>9 It goes on to state, in furtherance and not</p> <p>10 in limitation of the foregoing, which seemed to cover</p> <p>11 everything to me, buyer does not assume any liability of</p> <p>12 debtor or seller under the loan agreements that certain</p> <p>13 secured promissory note dated July 20th, 2017, payable</p> <p>14 by debtor to ACET Venture Partners, LLC in the stated</p> <p>15 principal amount of \$3,230,000 any equipment lease, any</p> <p>16 license agreement, or any other contract or obligation</p> <p>17 of debtor, its principals, officers, or directors, or</p> <p>18 any other party or any other person.</p> <p>19 So what -- why did you put this provision</p> <p>20 in?</p> <p>21 A. Well, this is a pretty standard provision when</p> <p>22 you are -- well, let me back up. I'm not familiar with</p> <p>23 foreclosure sale agreements, in particular, but this</p> <p>24 type of provision would be pretty common in a transfer</p> <p>25 of assets where you're assuming either none or some, you</p>
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<p>1 a look at this with me. Let me ask you before, was your</p> <p>2 understanding that -- was your understanding that</p> <p>3 Windspeed was assuming the note from ACET Global? How</p> <p>4 was it discharging this half a million dollars?</p> <p>5 A. Ultimately, yeah, it assumed the note.</p> <p>6 Q. So that was your understanding at this time was</p> <p>7 that Windspeed was going to be assuming the note, and so</p> <p>8 ACET Global is going to be relieved of that liability?</p> <p>9 A. At some -- there was some discussion. I don't</p> <p>10 know if it was at this time or some other time of a new</p> <p>11 note to replace the ACET note or -- a discussion of</p> <p>12 whether or not they were going to assume the ACET note</p> <p>13 or forgive the ACET note and issue a new note to</p> <p>14 Windspeed.</p> <p>15 Q. Okay. But somehow Windspeed was kind of taking</p> <p>16 on the liability and that was relieving ACET?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So Section 2.3 of this foreclosure sale</p> <p>19 agreement that you sent, it states, no assumption of</p> <p>20 obligations. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And it says, notwithstanding anything to</p> <p>23 the contrary in this agreement, buyer is not assuming</p> <p>24 and shall not be liable for any debt, obligation,</p> <p>25 responsibility, or liability of debtor, seller, or of</p>	<p>1 know, or certain liabilities.</p> <p>2 Q. Okay. And how did this help further your goals</p> <p>3 for ACET Global?</p> <p>4 MR. PERRIN: Objection, form.</p> <p>5 A. I don't know that it did or didn't. It was an</p> <p>6 agreement between Super G and Windspeed.</p> <p>7 Q. Okay. And so how did this accomplish what you</p> <p>8 understood this transaction to do for ACET Global?</p> <p>9 MR. PERRIN: Objection, form.</p> <p>10 A. Well, I'm not -- I'm not sure I understand your</p> <p>11 question. Can you repeat it?</p> <p>12 Q. Yeah. Well, let me ask it this way: If</p> <p>13 there's a specific provision you've inserted here, and</p> <p>14 now you're drafting this for Hallett & Perrin, but you</p> <p>15 don't have a client that's actually a party to this</p> <p>16 transaction, and you've asserted a paragraph that</p> <p>17 specifically provides that Windspeed is not assuming any</p> <p>18 liability for any of the loans or for the secured</p> <p>19 promissory note to ACET Venture Partners, how is this</p> <p>20 document leaving ACET Global, LLC better off?</p> <p>21 A. Well, it looks like this is an earlier version</p> <p>22 of the document where they were going to do a new note</p> <p>23 to Windspeed, but ultimately ended up having Windspeed</p> <p>24 assume the existing ACET note.</p> <p>25 Q. Did that, in fact, actually happen?</p>

17 (Pages 62 to 65)

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1 A. Yes, I believe that Windspeed assumed the ACET
2 Global note.
3 Q. So it's your understanding Windspeed Trading,
4 LLC assumed all of the debt that ACET Global owed to
5 Super G Capital?
6 A. Yes.
7 Q. Okay. And did you negotiate to remove this
8 provision you had inserted?
9 MR. PERRIN: Objection, form.
10 A. I don't recall this provision one way or the
11 other.
12 Q. Okay. Do you recall anyone -- do you recall
13 having discussions with anyone about this provision?
14 A. No.
15 Q. Okay.
16 MR. PERRIN: Jason, are you getting
17 anywhere to a stopping point? We've been going about an
18 hour and a half.
19 MR. FREEMAN: Sure.
20 MR. PERRIN: It's --
21 MR. FREEMAN: I'm pretty close to one.
22 MR. PERRIN: Okay.
23 Q. Let me ask you, there's a -- is it typical
24 and -- you know, I'm just a litigator, so I don't know a
25 lot about all of these documents. Is it typical to have

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1 a governing law provision in there?
2 A. Yes.
3 Q. Okay. And there's one here that provides for
4 governing law to be the State of Texas; is that correct?
5 A. Yes.
6 Q. Okay. And Baymark Partners was in Texas,
7 correct?
8 A. Yes, as was ACET Global.
9 Q. And ACET Global and Windspeed Trading --
10 A. Right.
11 Q. -- is that correct? But again, ACET Global
12 wasn't a party to this transaction, right?
13 A. Correct.
14 Q. So why would it be relevant that ACET Global is
15 in Texas?
16 A. I'm not sure that it would, but Windspeed
17 Trading is in Texas.
18 Q. Okay. So maybe that's relevant, and Super G
19 Capital was in California?
20 A. Yes, they're a California company.
21 Q. Okay. And so why was Super G Capital the
22 lender here? Why were they amenable to placing the
23 governing law as the State of Texas?
24 A. I have no idea.
25 Q. In your experience, is that common for a

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1 lender?
2 A. Well, I think -- again, this is not my area of
3 law, but I think that the foreclosure laws are a state
4 statutory law, and so because the businesses were
5 located in Texas, the foreclosure process was under
6 Texas law.
7 Q. Okay. And so that was the reason you put that
8 in there?
9 A. I don't -- I don't know that I put it in there,
10 but that's -- I'm guessing that's why -- the reason it
11 was in there because I know we had to comply with Texas
12 statutory law.
13 Q. Okay. And is that your name and the firm
14 Hallett Perrin as the notice party for any notices to
15 Windspeed Trading?
16 A. Yes.
17 Q. Why was Michelle Shiro included on this
18 e-mail?
19 A. She was counsel for -- foreclosure counsel to
20 Baymark.
21 Q. To Baymark Partners?
22 A. Baymark Partners Management, yes.
23 Q. Okay. And what was she advising about?
24 A. Well, we had never been through a foreclosure
25 process. That's not my area of law, so we went out to

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1 see -- seek someone to make sure we knew what we were --
2 doing things properly and by the book and exerting
3 whatever rights we had --
4 Q. Okay.
5 A. -- in this process.
6 MR. PERRIN: Are we close to a stopping
7 point?
8 MR. FREEMAN: Yeah, we -- just a couple
9 more questions, then we're there.
10 Q. Was -- so this was sent to attorneys at
11 Dorsey -- is that Whitney Dorsey -- and Baymark's
12 counsel, Ms. Shiro, and you, Baymark's counsel, but not
13 to Windspeed's counsel?
14 A. It does not look like that e-mail went to
15 Windspeed counsel.
16 Q. And so why are you sending a document that
17 says, you know, this is the final -- looks like we've
18 got the final document ready to sign, but the other
19 party to the contract is not on the e-mail?
20 A. They were communicating with us via e-mail and
21 over the phone their comments and changes in their
22 review of it.
23 Q. Okay. Normally, if there were another party
24 even if they were communicating with you by e-mail or by
25 phone, would you normally copy them on the e-mail

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1 exchange like this?

2 A. It depends. It depends on the circumstances.

3 Q. Okay. What kind of circumstances might warrant

4 not including them, like what were the circumstances

5 here that warranted not including them?

6 MR. PERRIN: Objection, form.

7 A. I don't know. I don't recall why I did or did

8 not include them on the e-mail.

9 Q. But you weren't representing Windspeed?

10 A. Correct.

11 Q. Okay.

12 MR. FREEMAN: Ed, yeah, do y'all want to

13 take a break?

14 MR. PERRIN: Yeah, let's take one.

15 MR. FREEMAN: Okay. How long do y'all want

16 to take?

17 MR. PERRIN: About 10 minutes. Just go

18 down the hall, get something to drink.

19 MR. FREEMAN: Sounds good.

20 MR. PERRIN: All right.

21 (Break taken from 2:36 p.m. to 2:51 p.m.)

22 MR. PERRIN: Jason, I just found out

23 something during the break. Apparently your Exhibit 13

24 to Ms. Smith's deposition, which is BP 012147, is part

25 of the document we snapped back this morning, and we

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1 request the snap back on that as well.

2 MR. FREEMAN: Oh, okay. Wait a second.

3 This is -- is -- this a separate document, though,

4 right?

5 MR. PERRIN: It's a separate document, but

6 it's part of that document, and we request a snap back

7 on it as well.

8 MR. FREEMAN: Well, we've already got it as

9 an exhibit here.

10 MR. PERRIN: Well, I -- we -- this -- we

11 let you know this morning when we first knew it was out

12 there, and we just got the documents that we could open

13 them up on -- the exhibits during the deposition and it

14 was brought to my attention as soon as I walked out

15 about this.

16 MR. FREEMAN: Okay. What provision is this

17 under?

18 MR. PERRIN: What do you mean what

19 provision is this under?

20 MR. FREEMAN: What rule is the snap back

21 under?

22 MR. PERRIN: Snap back is under Rule -- the

23 Texas Rules of Civil Procedure 193.3(d). We notified

24 you of any burden of proof disclosure of it this

25 morning. We just got this one, we notified you on that,

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1 and within ten days of our discovery of that production.

2 MR. FREEMAN: Okay. Give me just a second,

3 and I'll be back on.

4 MR. PERRIN: I mean, we can go ahead and

5 continue as long as you don't ask her about and you can

6 just do whatever you want to do.

7 (Off the record from 2:52 to 2:57 p.m.)

8 (Exhibit No. 13 withdrawn)

9 MR. FREEMAN: Okay. Back on the record.

10 Q. Ms. Smith, we were looking at -- before we just

11 took a short break, we were looking at Exhibit 10, and

12 I'll put that back on the screen. Was Baymark Partners

13 involved in reviewing the terms of the loan agreement

14 between Windspeed and Super G?

15 A. Yes.

16 Q. And why was that?

17 A. Well, they were a potential equity holder in

18 Windspeed.

19 Q. Okay. Were you representing Windspeed in

20 drafting or revising the loan agreement with Super G?

21 A. No. Alex Szeto represented them.

22 Q. Did you need Baymark's approval before

23 Windspeed could enter into a loan agreement with Super G

24 Capital?

25 A. Well, Baymark had a representative on the

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1 board.

2 Q. Okay. And was that representative on the board

3 there to advance Baymark's interests or to advance the

4 interests of Windspeed?

5 A. I'm not sure.

6 Q. Well, are you --

7 A. Go ahead.

8 Q. Are you trying to indicate to me that you were

9 representing the Baymark manager of Windspeed?

10 A. I was representing Baymark who had a manager on

11 the board of Windspeed in connection with a pretty

12 significant transaction of the company that they had a

13 warrant in -- was participating in.

14 Q. Okay. So you were only looking at this loan

15 agreement from the perspective of Baymark?

16 A. Yeah, although Baymark and Windspeed would have

17 been -- have similar positions in this agreement.

18 Q. Okay. Did the terms of the agreement need to

19 be accessible to Baymark?

20 A. As a board member, yes.

21 Q. And did Baymark Partners pay the legal fees to

22 review and revise the loan agreement between Windspeed

23 and Super G?

24 A. Well, I'm assuming that Windspeed paid their

25 loan agreements and -- I mean, I'm sorry, their legal

<p style="text-align: right;">Page 74</p> <p>1 fees and Super G paid theirs and Baymark paid mine. 2 Q. Okay. Ms. Smith, if you will look at 3 Exhibit 11 which I'll put on the screen. 4 (Exhibit No. 11 marked.) 5 Q. Do you see that? 6 A. Yes. 7 Q. And are you familiar with this exhibit? 8 A. Give me a second. Yes. 9 Q. Okay. Is this an e-mail from you? 10 A. Yes. 11 Q. Okay. To Brian Vanderwoude? 12 A. Yes. 13 Q. And Jamie Whatley? 14 A. Yes. 15 Q. On December 27th, 2018? 16 A. Yes. 17 Q. Is the subject line Super G/Windspeed - 18 Amendment to Loan Agreement? 19 A. Yes. 20 Q. Okay. And does it state, attached is a revised 21 draft of the Windspeed/Super G loan agreement and go on 22 to state, Windspeed has agreed to acquire the assets of 23 ACET for a purchase price equal to the principal balance 24 of the ACET loan? 25 A. Yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. That's a good question. I don't know. 2 Q. Okay. Did anyone ever value the collateral? 3 A. You mean like a third-party valuation firm? 4 Q. Yeah, or anyone. 5 A. I'm not aware that a third-party valuation firm 6 evaluated -- or valued the collateral. It's my 7 understanding that the three parties all agreed 8 generally as to the value which was significantly below 9 the amount of the loan. 10 Q. Okay. And where did you obtain that 11 understanding from? 12 A. I think it's actually in the foreclosure sale 13 agreement. 14 Q. That the value of the assets is substantially 15 below the amount of the loan? 16 A. Yeah, I think it references a value in the 17 foreclosure sale agreement. I don't have the agreement 18 in front of me, but I'm pretty sure. 19 Q. Okay. 20 A. The value of the assets are described in the 21 recitals. 22 Q. Okay. And we'll look at that in just a second, 23 but if I'm understanding, you're representing Baymark in 24 this transaction and -- 25 A. Foreclosure sale agreement?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Okay. Why was the purchase price equal to the 2 amount of the ACET loan? 3 A. I think that was the agreement between the 4 parties. 5 Q. Okay. Why was the purchase price not equal to 6 the value of the collateral? 7 A. You'll have to ask Windspeed that. 8 Q. Okay. What would ACET have to say about that? 9 MR. PERRIN: Objection, form. 10 A. Again, they would be happy to have half a 11 million dollars of debt relief. 12 Q. Okay. Because Windspeed seems to know nothing 13 about this, so I've asked Windspeed. I'm trying to 14 understand why on earth would the purchase price be for 15 the amount of the loan rather than the value of the 16 collateral. 17 MR. PERRIN: Objection, form, if there's a 18 question out there. 19 THE WITNESS: Do I answer it? 20 MR. PERRIN: If you think that's a 21 question. 22 THE WITNESS: I'm sorry, repeat it again. 23 Q. Well, why would the purchase price be equal to 24 the amount of the loan that ACET Global owed to Super G 25 Capital rather than the value of the collateral?</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Yeah. 2 A. No. I'm representing ACET in the foreclosure 3 sale agreement. 4 Q. Okay. What about these loan documents that 5 we're looking at? 6 A. Which ones? The original \$200,000 loan 7 document, or the assumption of the ACET loan? 8 Q. The assumption of the ACET loan, and the loan 9 between Windspeed and Super G Capital. 10 A. Okay. So what is your question? 11 Q. Okay. You're engaging in that process on 12 behalf of Baymark Partners; is that what you're -- 13 correct? 14 MR. PERRIN: Objection, form. 15 A. I am engaging in the original Windspeed note. 16 Q. Well, you're telling me that all of the 17 parties, your client included, understood that the value 18 of the inventory and assets was way less than the amount 19 of the note that ACET owed, correct? 20 A. That is my understanding. 21 Q. Okay. Why are you advising your client that 22 it's a good idea to buy a bunch of assets for the price 23 of assuming a note that's way more than the value of 24 those assets? 25 A. That's not my client. I did not advise them to</p>

<p style="text-align: right;">Page 78</p> <p>1 do that.</p> <p>2 Q. Okay. Why are you advising Baymark, who you</p> <p>3 say sits on the board and controls Windspeed, why are</p> <p>4 you advising them that that's somehow in their interest?</p> <p>5 A. I think that's privileged.</p> <p>6 Q. Okay. Well, was there a discussion about the</p> <p>7 reasons that it may be in Baymark's interest to transfer</p> <p>8 these assets of ACET into Windspeed Trading?</p> <p>9 MR. PERRIN: Objection, form.</p> <p>10 A. Again, I think that's privileged conversations</p> <p>11 with my client.</p> <p>12 Q. Okay. And was there a discussion about the</p> <p>13 potential consequences to Baymark Partners as a result</p> <p>14 of the transfer of assets from ACET Global to Windspeed</p> <p>15 Trading?</p> <p>16 THE WITNESS: Is this why you want to have</p> <p>17 a standing --</p> <p>18 MR. PERRIN: Yeah.</p> <p>19 A. I think that's privileged.</p> <p>20 Q. Okay. Was there a discussion that the transfer</p> <p>21 of assets from ACET Global to Windspeed might be viewed</p> <p>22 as a fraudulent transfer?</p> <p>23 MR. PERRIN: Objection, form.</p> <p>24 A. Were there concerns that it might be viewed as</p> <p>25 a fraudulent transfer?</p>	<p style="text-align: right;">Page 80</p> <p>1 clients. If you've had any communications with other</p> <p>2 parties, you can disclose it.</p> <p>3 A. Yeah, I think whatever communications I had</p> <p>4 would be privileged.</p> <p>5 Q. Did you have a discussion with your clients</p> <p>6 that the --</p> <p>7 A. I'll just say privileged now.</p> <p>8 Q. Did you have a discussion with your clients</p> <p>9 that the transfer of assets that were owned by ACET</p> <p>10 Global into Windspeed Trading would be a fraudulent act?</p> <p>11 A. I believe that'd be privileged.</p> <p>12 Q. Did you have discussions that the transfer of</p> <p>13 assets owned by ACET Global into Windspeed Trading would</p> <p>14 be a criminal act?</p> <p>15 MR. PERRIN: Objection, form.</p> <p>16 A. Again, there wasn't a transfer from ACET to</p> <p>17 Windspeed, but it's -- but to the extent there would</p> <p>18 have been communications, those would have been</p> <p>19 privileged.</p> <p>20 Q. Okay. But there was a -- there was a</p> <p>21 foreclosure by Super G on ACET Global?</p> <p>22 A. Correct.</p> <p>23 Q. And Windspeed Trading did purchase those assets</p> <p>24 from Super G, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Yes, ma'am.</p> <p>2 A. I don't see how a fraudulent transfer is for</p> <p>3 transfer of -- for less than value. This was a transfer</p> <p>4 that arguably was much more than value.</p> <p>5 Q. Okay. So is that a no?</p> <p>6 MR. PERRIN: Objection, form.</p> <p>7 A. Are there -- so the question was -- tell me the</p> <p>8 question again, and I'll answer it yes, no.</p> <p>9 Q. Yeah. The question is, did you have</p> <p>10 discussions about whether the transfer of assets from</p> <p>11 ACET Global to Windspeed Trading would be viewed as a</p> <p>12 fraudulent transfer?</p> <p>13 A. Well, the assets didn't transfer from ACET</p> <p>14 Global to Windspeed. The assets transferred from Super</p> <p>15 G to Windspeed --</p> <p>16 Q. Okay.</p> <p>17 A. -- as a result of the foreclosure.</p> <p>18 Q. Okay.</p> <p>19 MR. FREEMAN: Objection, nonresponsive.</p> <p>20 Q. Did you have any discussions about whether the</p> <p>21 ultimate transfer of assets that had been held by ACET</p> <p>22 Global to Windspeed Trading could be viewed as a</p> <p>23 fraudulent transfer?</p> <p>24 MR. PERRIN: Ms. Smith, I would caution you</p> <p>25 that -- not to disclose any communication with your</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. And you represented ACET Global?</p> <p>2 A. Yes.</p> <p>3 Q. And you did not represent Windspeed Trading,</p> <p>4 you maintain, correct?</p> <p>5 A. Not as part of the foreclosure agreement.</p> <p>6 Q. Yet you drafted and revised a foreclosure sale</p> <p>7 agreement between Windspeed and Super G Capital,</p> <p>8 correct?</p> <p>9 A. I did not draft it. I reviewed it and offered</p> <p>10 provisions to it.</p> <p>11 Q. And red-lined it, correct?</p> <p>12 A. Yep.</p> <p>13 Q. But you didn't have a client that was executing</p> <p>14 that document, correct?</p> <p>15 A. No, but I had a client that was going to get</p> <p>16 rid of half a million dollars of debt as a result of it.</p> <p>17 Q. Okay. Okay. Going back to Exhibit 11,</p> <p>18 Ms. Smith, you stated that attached was the revised</p> <p>19 draft of the Windspeed/Super G loan agreement; is that</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And it says the document Super G</p> <p>23 provided to you appeared to reference the ACET loan</p> <p>24 agreement, so I revised it to reflect the provisions of</p> <p>25 the Windspeed loan agreement; is that correct?</p>

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1 A. That's what it says.
2 Q. Okay. Were -- the documents reflected here
3 attached to your e-mail, were they related to the
4 foreclosure sale?
5 A. They were related to Windspeed's assumption of
6 the ACET loan.
7 Q. Okay. Were they related to the foreclosure
8 sale?
9 A. Yes.
10 Q. Okay. And how so?
11 A. Well, part of the conditions of the sale was
12 the assumption of this note.
13 Q. Okay. And when was Windspeed going to assume
14 this note?
15 A. In connection with the foreclosure sale. I'm
16 not sure what you're asking.
17 Q. Okay. Well, are you referring to -- in this
18 e-mail, is this related to Windspeed assuming ACET
19 Global's note to Super G?
20 A. Okay. Ask your question again.
21 Q. Well, I'm trying to figure out how this is
22 related to the foreclosure sale. That's ultimately what
23 I'm trying to understand.
24 A. Well, I think this was essentially the con --
25 part of the consideration to have been paid in the

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1 foreclosure sale is the assumption of the liability by
2 Windspeed.
3 Q. Okay. Was that provided in the foreclosure
4 sale documents?
5 A. Yeah, I think so. I don't have the document in
6 front of me, but I would think it would describe the
7 consideration.
8 Q. Okay. You state in this e-mail that Baymark
9 has not had a chance to review or comment on these terms
10 and these terms may or may not be acceptable to Baymark.
11 Does that refer to Baymark Partners or some other --
12 A. Baymark Partners Management I think is the
13 entity that's in this.
14 Q. Okay. Why is Baymark needing to review these
15 terms?
16 A. Because it is an obligation that a company has
17 a potential acquired equity interest in is assuming.
18 Q. Okay. Did you have a call in late 2018 with
19 Super G counsel, Tony Ludlow, Matt Denegre?
20 A. I might have.
21 Q. Okay. And Steve Bellah, possibly, as well?
22 A. I don't think we would have talked to Super G's
23 counsel without Super G on the phone as well.
24 Q. Okay. What did you discuss?
25 A. I have no memory of it.

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1 Q. Was there a need to clarify the ACET loan at
2 that time?
3 A. I don't know.
4 Q. And would that discussion have been related to
5 the foreclosure?
6 A. Are you asking about the purpose of this
7 e-mail?
8 Q. No. I'm asking about your call in December --
9 late December of 2018.
10 A. I don't recall a phone call.
11 Q. Okay. Ms. Smith, I'm showing you what's marked
12 as Exhibit 12.
13 (Exhibit No. 12 marked.)
14 Q. Do you see that document?
15 A. Yes.
16 Q. Are you familiar with this series of e-mails?
17 I'll scroll down to the bottom so you can read.
18 A. Yeah, I see it.
19 Q. Okay. Is this e-mail correspondence between or
20 among Brian Vanderwoude, Steve Bellah, Matt Denegre,
21 Tony Ludlow, and you?
22 A. Yes.
23 Q. In December of 2018?
24 A. Yes.
25 Q. Late December of 2018?

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1 A. Yes.
2 Q. And is the Re line, schedule a call?
3 A. Yes.
4 Q. Okay. And did you get into this because
5 Mr. Vanderwoude cc'd you on an e-mail in which he said,
6 looping in buyer's counsel, I'm open anytime today?
7 A. Looks like that's what he wrote.
8 Q. Okay. And who was the buyer on the transaction
9 at issue?
10 A. Windspeed.
11 Q. Okay. And were you, in fact, buyer's counsel?
12 A. No.
13 Q. No? Did you correct Mr. Vanderwoude?
14 A. It does not look like I did in that e-mail.
15 Q. Okay. But did you work pretty closely with
16 Mr. Vanderwoude on this transaction?
17 A. I worked closely with Mr. Vanderwoude and Mr.
18 Szeto.
19 Q. Okay. And were you and Mr. Vanderwoude the two
20 primary attorneys on this transaction?
21 A. Well, there were three attorneys on the
22 transaction.
23 Q. Okay. Did he often refer to you as buyer's
24 counsel?
25 A. I don't know. I wouldn't have even remembered

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1 that he did it there. He was obviously mistaken.
2 Q. Do you have any reason for why he might be
3 mistaken that you were Windspeed's counsel?
4 A. I -- no.
5 Q. Okay. Did you ever discuss the risk of this
6 transaction with Baymark Partners?
7 A. I would have discussed the risk of any
8 transaction with any client.
9 Q. Okay. Did you discuss the risk of this
10 transaction with Matt Denegre or Tony Ludlow?
11 A. Again, any transaction that a client does has
12 risks and liabilities, and it's my job to identify those
13 and try to make it -- that I can. Any confrontations
14 that I would have had with this particular transaction
15 would have been covered by attorney-client privilege.
16 Q. Okay. Did you ever discuss successor liability
17 with Matt Denegre?
18 A. Again, attorney-client privilege.
19 Q. Did you ever discuss successor liability with
20 Tony Ludlow?
21 A. That would also be covered by attorney-client
22 privilege.
23 Q. And did you ever discuss successor liability
24 with Matt Denegre and Tony Ludlow related to the
25 transactions we have been discussing in this deposition?

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1 A. Again, that's covered by attorney-client
2 privilege.
3 Q. Did you ever discuss successor liability with
4 Matt Denegre and Tony Ludlow related to Windspeed
5 Trading's acquisition of the ACET global assets?
6 A. I feel like I'm answering these questions --
7 yes. Again, covered by attorney-client privilege.
8 Q. Okay. Did Baymark Partners ever express
9 concern about exposure for liability as a result of
10 this -- these transactions?
11 A. Again, that's covered by attorney-client
12 privilege.
13 Q. Did you believe that there was any successor
14 liability risk?
15 A. I think that's attorney-client privilege as
16 well.
17 Q. And why again would there be successor
18 liability risk?
19 A. I can't speculate in this instance.
20 Q. Was Baymark Partners paying the Super G loan on
21 behalf of Windspeed?
22 A. I don't know.
23 Q. What exactly was its interest in the
24 transaction?
25 A. Who is it?

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1 Q. Baymark Partners.
2 A. What transaction?
3 Q. The loan between Windspeed and Super G.
4 A. It had an interest as a potential equity holder
5 in Windspeed.
6 Q. Okay. And did it propose any changes?
7 A. Yes. It, meaning me?
8 Q. It, meaning Baymark.
9 A. To the extent they proposed any changes, that
10 would be attorney-client privilege, I think.
11 Q. Okay. And who, again -- who was a party to the
12 loans between Super G and Windspeed Trading?
13 MR. PERRIN: Objection, form.
14 A. Super G and Windspeed.
15 Q. Was Baymark Partners a guarantor?
16 A. No, not that I recall.
17 Q. And who all was involved in the negotiation of
18 the loan?
19 A. Attorneys or business folks?
20 Q. All.
21 A. It would have been Super G and their counsel,
22 Windspeed and its counsel, and then Baymark and me.
23 Q. Okay. Ms. Smith, I'll show you what's marked
24 as Exhibit 14.
25 (Exhibit No. 14 marked.)

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1 Q. Do you see this document?
2 A. Yes.
3 Q. Is this an e-mail from Matt Denegre to you on
4 January 2nd, 2019?
5 A. Yes.
6 Q. And he cc's William Szeto?
7 A. Yes.
8 Q. And the subject line is Super G/Windspeed -
9 Amendment to Loan Agreement, correct?
10 A. Yes.
11 Q. Okay. And Matt requests some payment terms on
12 the loan between Windspeed and Super G?
13 A. Yes.
14 Q. Okay. And who were those requested for?
15 A. I guess those are payment terms that Windspeed
16 would provide to Super G.
17 Q. Okay. Did you end up proposing those payment
18 terms?
19 A. Yes, I -- if that's what the business folks had
20 agreed to, I would have forwarded that to Super G's
21 counsel.
22 Q. Okay. Did Baymark control Windspeed?
23 A. No.
24 Q. You never got that sense?
25 A. No. Bill Szeto is pretty powerful -- pretty

<p style="text-align: right;">Page 90</p> <p>1 strong personality.</p> <p>2 Q. I will agree with that. Did Baymark Partners</p> <p>3 ever agree to allow Windspeed to assume the old ACET</p> <p>4 loan?</p> <p>5 A. It wasn't their place to agree or disagree.</p> <p>6 Q. So it wasn't Baymark's place to agree or</p> <p>7 disagree about whether Windspeed assumed the loan</p> <p>8 between ACET Global and Super G?</p> <p>9 A. You mean as in ACET and its responsibilities</p> <p>10 for ACET?</p> <p>11 Q. I mean for Windspeed.</p> <p>12 A. Okay. So the question is, did Baymark have the</p> <p>13 right to approve the loan between Windspeed and Super G?</p> <p>14 Q. So yeah, I mean, did Baymark Partners, did it</p> <p>15 have the right to allow or not allow Windspeed to assume</p> <p>16 the old ACET loan that was owed to Super G?</p> <p>17 A. It would have had a vote on the board.</p> <p>18 Q. Okay. So it did control that, then?</p> <p>19 A. I don't think controlled, no.</p> <p>20 Q. Okay.</p> <p>21 A. It's a unit.</p> <p>22 Q. So it had a say in whether it would allow</p> <p>23 Windspeed to assume the note?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And I'm putting on the screen what's</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Okay.</p> <p>2 A. And it's important to note in that third</p> <p>3 paragraph, part of the reason for that is that Windspeed</p> <p>4 had already -- in their journey, they've already</p> <p>5 reviewed the form of the Super G note which was</p> <p>6 different than the form of note that ACET had signed.</p> <p>7 Q. Okay.</p> <p>8 A. So for the ease of everyone reviewing it,</p> <p>9 including the Windspeed attorney, it made sense to use</p> <p>10 the Windspeed note as a base --</p> <p>11 Q. Okay. Did you --</p> <p>12 A. -- when we --</p> <p>13 Q. Did you draft the amended and restated loan</p> <p>14 agreement?</p> <p>15 A. I did at the request of Super G's counsel.</p> <p>16 Q. Okay. Did Super G ever ask why Baymark</p> <p>17 Partners was involved?</p> <p>18 A. I don't know if Super G ever asked why Baymark</p> <p>19 Partners was involved.</p> <p>20 Q. Or why Baymark Partners was proposing terms or</p> <p>21 changes?</p> <p>22 A. I don't know that they ever asked that.</p> <p>23 Q. Okay. And on this document, do you state that</p> <p>24 there will likely be two attorneys negotiating the</p> <p>25 document on behalf of Windspeed?</p>
<p style="text-align: right;">Page 91</p> <p>1 marked as Exhibit 15.</p> <p>2 (Exhibit No. 15 marked.)</p> <p>3 Q. Do you see that document?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And is this an e-mail between you and</p> <p>6 Brian Vanderwoude?</p> <p>7 A. Correct.</p> <p>8 Q. In January of 2019?</p> <p>9 A. Yes.</p> <p>10 Q. January 17th?</p> <p>11 A. Yes.</p> <p>12 Q. And the subject line is Windspeed/Super G</p> <p>13 Transaction; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you say on page 2 here, dropping down,</p> <p>16 Baymark has agreed to allow Windspeed to assume the ACET</p> <p>17 loan; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And then you propose the terms that were</p> <p>20 provided to you by Mr. Denegre?</p> <p>21 A. And Mr. Szeto.</p> <p>22 Q. Okay. And then Mr. Vanderwoude, does he ask</p> <p>23 you to take the laboring oar on drafting the amended and</p> <p>24 restated agreement?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And were you referring to yourself as</p> <p>3 one of those attorneys?</p> <p>4 A. It says, I will likely review it on behalf of</p> <p>5 Baymark and Alex Szeto, another attorney, will do it on</p> <p>6 behalf of Bill Szeto.</p> <p>7 Q. Okay. What about Windspeed?</p> <p>8 A. Well, I guess these attorneys are representing</p> <p>9 the members of Windspeed. I mean, are effectively --</p> <p>10 yes. Yeah, Alex was representing one of the members,</p> <p>11 and I was representing one of the others, or I guess</p> <p>12 some of the potential equity interest in it.</p> <p>13 Q. Okay. So you weren't referring there to you</p> <p>14 representing on behalf of Windspeed?</p> <p>15 A. No. It looks like it says I was looking -- on</p> <p>16 behalf of Baymark.</p> <p>17 Q. Okay. Did you refer to another attorney there</p> <p>18 who was going to be reviewing it on behalf of Windspeed?</p> <p>19 A. Alex Szeto.</p> <p>20 Q. Okay. And who were the only two attorneys you</p> <p>21 referred to after making that statement?</p> <p>22 A. Two attorneys I referred to?</p> <p>23 Q. Yeah, you said, there will likely be two</p> <p>24 attorneys negotiating the document on behalf of</p> <p>25 Windspeed, and you refer to two attorneys.</p>

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1 A. Yeah, one -- me on behalf of Baymark and Alex
2 on behalf of Szeto and Windspeed.
3 Q. Okay. And down in the final paragraph, you
4 state, I think you mentioned you can send us the
5 research/cases you found that supported Super G's
6 position regarding the risk of successor liability. I
7 wanted to take you up on that offer and get copies of
8 the research/case law from you. And is that your
9 statement to Mr. Vanderwoude?
10 A. Yes. It's in the e-mail.
11 Q. Okay. And did you discuss the successor
12 liability issue with Mr. Vanderwoude?
13 A. Yes, it looks like I did.
14 Q. Okay. And did you discuss the risk to your
15 clients?
16 A. To Brian -- to Vanderwoude's and my clients?
17 Q. Yes.
18 A. Yes.
19 Q. Okay. And did you discuss the basis for that
20 potential exposure?
21 A. I think we discussed it generally to understand
22 if there was any successor liability issues.
23 Q. Okay. And what did he say?
24 A. Honestly, I don't recall.
25 Q. Okay. Was he worried about it?

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1 A. Based on the e-mail, it looks like he was not.
2 Q. Okay. Why do you think Super G could have had
3 any risk of successor liability?
4 A. I don't know.
5 Q. It wasn't implicitly or expressly assuming any
6 liabilities, was it?
7 A. No. Well, no.
8 Q. No? In the -- there really wasn't any basis
9 for successor liability other than fraud, was there?
10 MR. PERRIN: Objection, form.
11 A. There's lots of other bases for successor
12 liability other than form.
13 Q. That could apply to Super G Capital? Can you
14 name one?
15 A. Can you give me a fact situation?
16 Q. The fact situation we're dealing with here with
17 Super G as the lender, how does it have exposure for
18 successor liability?
19 A. I'm not sure that it would.
20 Q. Okay.
21 A. I think this is probably successor liability
22 for Windspeed.
23 Q. For Windspeed?
24 A. Uh-huh.
25 Q. And what kind of liability was it concerned

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1 about?
2 A. Well, it was assuming a note.
3 Q. Was it?
4 A. Yeah.
5 Q. Okay. And why would that give it concern about
6 successor liability?
7 A. Overbroadly, it was assuming assets and
8 operations of a company that was not doing well.
9 Q. Okay.
10 A. It would be reasonable to wonder if you had --
11 if the acquirer, transferee would be opening itself up
12 to any successor liabilities.
13 Q. Okay.
14 A. That's --
15 Q. So that's the best answer?
16 A. Yeah. I mean, we think about that in any
17 transaction where there's an asset transfer.
18 Q. Okay. But you weren't Windspeed's attorney,
19 correct?
20 A. Correct.
21 Q. And were you doing research here on behalf of
22 Windspeed or behalf of Baymark?
23 A. Baymark.
24 Q. Okay. And so were you, in fact, actually
25 concerned here about successor liability to Baymark?

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1 A. I think that that would be attorney-client
2 privilege.
3 Q. I don't think that this is if you're discussing
4 it with Brian.
5 A. My -- whether or not I am concerned about
6 successor liability is my mental impression. Isn't that
7 covered by attorney-client privilege?
8 Q. No.
9 MR. PERRIN: I disagree.
10 MR. FREEMAN: Ed, you can disagree all you
11 want, but if there's a privilege there, it's not
12 attorney-client privilege. It's work product. And
13 yeah, that can be waived as well. But Ed, do you want
14 to go ahead and tell me how that's attorney-client
15 privilege?
16 MR. PERRIN: She asserted privilege and
17 mental impressions. You're right, mental impressions
18 give more work product, but if it's based on client
19 communication would also be attorney-client privilege.
20 MR. FREEMAN: Okay.
21 Q. What did the cases reflect that Brian sent to
22 you?
23 A. I never got them.
24 Q. Okay. Did you discuss those cases with Baymark
25 Partners?

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<p>1 A. No.</p> <p>2 Q. Ms. Smith, I'm putting on the screen what's</p> <p>3 marked as Exhibit 16.</p> <p>4 (Exhibit No. 16 marked.)</p> <p>5 Q. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And on this e-mail, is this an e-mail from you</p> <p>8 to Mr. Vanderwoude?</p> <p>9 A. Yes.</p> <p>10 Q. January 21st, 2019?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And is it -- is what's attached to this</p> <p>13 a draft of the amended and restated loan agreement</p> <p>14 between Super G and Windspeed?</p> <p>15 A. It looks like it is, yes.</p> <p>16 Q. Okay. And did you title the document that was</p> <p>17 attached?</p> <p>18 A. That would be a document number from our</p> <p>19 system.</p> <p>20 Q. Okay. So this is -- the document that's</p> <p>21 attached here is a document from Hallett & Perrin's</p> <p>22 document system?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And is -- this Exhibit 16, is this a</p> <p>25 true and correct copy of the e-mail that you sent on</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Is this an e-mail exchange between you</p> <p>3 and Mr. Vanderwoude?</p> <p>4 A. Yes.</p> <p>5 Q. Friday, January 25th, 2019?</p> <p>6 A. Yes.</p> <p>7 Q. The subject line, Super G/Windspeed?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And on the second page here, do you</p> <p>10 state -- do you state also, I can't recall, did we</p> <p>11 revise the sale agreement to reflect that we were</p> <p>12 assuming the old ACET note rather than entering into a</p> <p>13 new one?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Okay. And by we, did you mean Baymark?</p> <p>16 A. I think I meant the parties, generally.</p> <p>17 Q. All the parties were going to assume the old</p> <p>18 ACET note?</p> <p>19 A. Yeah. I mean, it was a transaction structured</p> <p>20 as an assumption of the old note.</p> <p>21 Q. Didn't you, in fact, mean we, as Windspeed</p> <p>22 because you were representing Windspeed?</p> <p>23 A. No.</p> <p>24 Q. No?</p> <p>25 A. I didn't represent Windspeed.</p>
Page 99	Page 101
<p>1 January 21, 2019?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. And did you refer to this -- do you</p> <p>4 refer to this -- the loan as the old ACET loan?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And is that -- did you originally plan</p> <p>7 to have the parties execute the foreclosure sale</p> <p>8 agreement prior to sending out notices of foreclosure?</p> <p>9 A. Say that again.</p> <p>10 Q. Did you originally plan to have the parties</p> <p>11 execute the foreclosure sale agreement prior to sending</p> <p>12 out notices of foreclosure?</p> <p>13 A. I think originally Super G wanted the</p> <p>14 foreclosure sale agreement executed ahead of getting</p> <p>15 the -- sending the notice out that, hence the need for</p> <p>16 the bifurcated closing, that ultimately didn't -- as we</p> <p>17 discussed before, that ultimately didn't end up</p> <p>18 happening. They sent the notice out prior to it being</p> <p>19 executed.</p> <p>20 Q. Okay. And I'm putting on the screen what's</p> <p>21 marked as Exhibit 17.</p> <p>22 (Exhibit No. 17 marked.)</p> <p>23 Q. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you recognize this document?</p>	<p>1 Q. Okay. And you didn't mean by that that we were</p> <p>2 assuming the old ACET note, you didn't mean by that that</p> <p>3 Windspeed was assuming it?</p> <p>4 A. No. I don't think I put that much thought into</p> <p>5 the pronoun.</p> <p>6 Q. Okay. Would you have been able to get</p> <p>7 Windspeed to execute the documents?</p> <p>8 A. Well, they did execute the documents after Bill</p> <p>9 and Alex looked through everything.</p> <p>10 Q. Okay. And in fact, here, didn't you state that</p> <p>11 I can forward -- I can forward on to Windspeed for</p> <p>12 execution?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. How did you know there wouldn't be any</p> <p>15 further back and forth?</p> <p>16 A. Well, we were in communications throughout this</p> <p>17 whole process.</p> <p>18 Q. Okay.</p> <p>19 A. So this isn't nefarious. It wasn't -- but we</p> <p>20 had been communicating with Bill and Alex. We knew what</p> <p>21 the issues were, we knew -- we were communicating with</p> <p>22 Brian and Super G.</p> <p>23 Q. Have you produced those e-mails?</p> <p>24 A. I think we've produced everything that was in</p> <p>25 the e-mail.</p>

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<p>1 Q. Okay. You -- all of your correspondence with 2 Alex Szeto and Bill? 3 A. That's my understanding. 4 Q. And your testimony is that there was a lot of 5 correspondence from you directly with just them? 6 A. No. That was not my testimony. What I was 7 saying is that everyone was on board with this 8 agreement, and there isn't any nefarious point to me 9 saying I can get it forwarded to Windspeed for 10 execution. They were a part of this, they reviewed it. 11 Q. I mean, didn't you, in fact, say that you can 12 forward it on to Windspeed for execution because 13 Windspeed was your client? 14 A. No. No. 15 Q. Why is that so unbelievable? 16 A. I feel like I've answered this question a lot. 17 Windspeed is not my client. 18 Q. Let's go back to -- 19 A. Represented by Alex Szeto and Bill Szeto was a 20 seasoned entrepreneur. 21 Q. Okay. If we go back to the first page, page 1 22 of Exhibit 17, you ask, can you update the Windspeed 23 address for notice purposes to be the same address as in 24 the A&R loan agreement; is that correct? 25 A. That's what that says.</p>	<p>1 to send out the foreclosure notice a couple of weeks 2 ago? 3 A. Yes. 4 Q. And why did you make that statement? 5 A. It was my understanding that there was a 6 ten-day waiting period after the notice was provided to 7 other creditors before the foreclosure could happen. 8 Q. Okay. 9 A. And administratively or process-wise, trying to 10 understand where we were in the timing. 11 Q. Okay. What foreclosure notice were you 12 referring to here? 13 A. The one you showed me earlier. 14 Q. So the exhibit from the January 31, 2019, 15 letter? 16 A. I think so. It was on Super G letterhead. 17 Q. Okay. Just to be clear here, is it this -- 18 what's reflected here in Exhibit 1? 19 A. Yes. 20 Q. Okay. And so now, why were you discussing that 21 with Super G weeks before it was sent out? 22 A. Well, I didn't know it wasn't sent out. The 23 understanding I had at the end of the year was that 24 Super G was sending it out. 25 Q. Okay. Let me show you what's marked as</p>
Page 103	Page 105
<p>1 Q. Now, if Bill Szeto is such a seasoned expert 2 and Alex Szeto is such a seasoned M&A attorney, why 3 can't they request updates of their address? 4 MR. PERRIN: Objection, form. 5 A. I think they could ask for updates to their 6 notice address. 7 Q. Okay. And after that, do you state also, 8 William C. Szeto will sign as the manager of Windspeed? 9 A. Yes. 10 Q. Okay. Is that because Windspeed was your 11 client? 12 A. No. No. We were conforming a document to the 13 information that was provided in another document. 14 Q. Okay. And then did you go on to state, I will 15 have Windspeed sign the signature page and return it to 16 you? 17 A. Again, we all were working together to get this 18 agreement finalized. 19 Q. Okay. Going back to the second page, did you 20 state that, I believe Super G was going to send out the 21 foreclosure notice a couple of weeks ago? 22 A. I don't see it on this page. 23 Q. It's right here. If you'll look on the screen. 24 A. Yes, I see that. 25 Q. Okay. You stated, I believe Super G was going</p>	<p>1 Exhibit 18. 2 (Exhibit No. 18 marked.) 3 Q. Do you see that document, Ms. Smith? 4 A. Yes. 5 Q. Okay. Are you familiar with this document? 6 A. No. 7 Q. Okay. Does this appear to be an e-mail between 8 Matt Denegre and Steve Bellah? 9 A. Yes. 10 Q. Okay. January 28th, 2019? 11 A. Yes. 12 Q. Okay. And is the subject line, Super 13 G/Windspeed? 14 A. Yes. 15 Q. Okay. And below here in this chain, is there a 16 subject line with a forward of Super G/Windspeed? 17 A. Yes. 18 Q. Okay. And does Steve Bellah there state to 19 Matthew Denegre, please look at the attached notice to 20 determine if it's the proper notice address as listed 21 for seller/seller's counsel? 22 A. Yes. 23 Q. Okay. And did Matt -- above that, did Matt 24 send your name to Steve Bellah? 25 A. Yes.</p>

27 (Pages 102 to 105)

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<p>1 Q. Why would Matt send your name in response to 2 that question? 3 A. Because this would have been noticed to ACET in 4 the foreclosure notice, and I was counsel to ACET. 5 Q. Okay. And now, wasn't Steve asking for the 6 notice address for seller, seller's counsel? 7 A. That's what it says there. 8 Q. Okay. And why did that provide for your name? 9 A. I think that was an inaccurate e-mail. 10 Probably let the -- they thought it was going to be an 11 asset purchase agreement, but the foreclosure notice, I 12 think, is required to be sent to the foreclosee, the 13 company being foreclosed upon. 14 Q. Okay. 15 A. So they were, I'm sure, clearing up who the 16 counsel was for that. 17 Q. Okay. 18 A. It's possible, too, that the loan -- the 19 original loan agreement would have had notice provision 20 to Hallett & Perrin, but to my predecessor. I don't 21 know that for sure, but possibly updating Matt to make 22 sure that it's the correct. 23 Q. Was that Mr. Foote? 24 A. Yes, or -- 25 Q. Cassandra?</p>	<p>1 Mr. Vanderwoude? 2 A. Yes. 3 Q. On January 28th, 2019? 4 A. Yes. 5 Q. And is the subject line Super G/Windspeed? 6 A. Yes. 7 Q. And the attachments here are listed as ACET 8 notice of private sale? 9 A. Yes. 10 Q. Okay. And do you know if that was the notice 11 of disposition of sale? 12 A. I believe there was only one notice of 13 foreclosure that was ever negotiated and drafted. 14 Q. Okay. And did you have a discussion with Super 15 G counsel about giving Tomer Damti notice of Super G's 16 foreclosure? 17 A. Yes. 18 Q. And about giving Tomer Damti an opportunity to 19 purchase the assets? 20 A. Yes. 21 Q. Did you discuss that parties knew he wouldn't 22 exercise it? 23 A. I don't recall specifically. I think everybody 24 was under the impression he wouldn't. 25 Q. That he wouldn't?</p>
Page 107	Page 109
<p>1 A. -- Cassandra, one of the two. 2 Q. Okay. And you reviewed the foreclosure notice 3 before it went out, correct? 4 A. I did. 5 Q. Okay. And that was the notice that Super G was 6 foreclosing on ACET Global's assets? 7 A. Yes. 8 Q. Okay. And did you suggest some changes to the 9 foreclosure notice before it went out? 10 MR. PERRIN: Objection, form. 11 A. I might have. I don't recall a lot of 12 discussion around that document. That doesn't mean 13 there wasn't tweaks made to it, but I think it was -- it 14 stands -- it stood pretty close to final form when it 15 was drafted. 16 Q. Okay. And you were representing ACET Global -- 17 A. Yes. 18 Q. -- in that process? 19 A. Yes. 20 Q. Okay. And so I'm showing what's marked as 21 Exhibit 19. 22 (Exhibit No. 19 marked.) 23 Q. Do you see this? 24 A. Yes. 25 Q. Okay. And is this an e-mail from you to</p>	<p>1 A. That he would not. 2 Q. Okay. Like he wouldn't be able to? 3 A. Oh, I don't know about that. I think it was a 4 courtesy. 5 Q. Okay. Did Super G state that Tomer Damti was 6 not entitled a notice? 7 A. For the statute, yes. 8 Q. Super G's counsel? 9 A. I'm sorry? 10 Q. Super G's counsel said that Tomer Damti was not 11 entitled to notice? 12 A. Super G's counsel said that the Texas statute 13 does not require unsecured creditors to be given notice 14 of a foreclosure sale. 15 Q. Okay. And how did you respond? 16 A. That I thought that we should provide notice to 17 him. 18 Q. Okay. And did you, in fact, know that Tomer 19 Damti was actually a secured rather than an unsecured 20 creditor? 21 MR. PERRIN: Objection, form. 22 A. I do not believe he was a secured creditor to 23 that -- ACET's assets. 24 Q. Okay. And why do you believe that? 25 A. I don't recall any security agreement, I don't</p>

28 (Pages 106 to 109)

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1 recall any lien filings. I think he might have had a
2 pledge of some of the equity interest or some of the
3 economic interests of Holdco, but I don't think he had
4 any rights to any of the ACET Global assets.
5 Q. Okay. So if Tomer Damti had a security
6 interest in the assets of ACET Global, would that change
7 your view of whether this foreclosure process was
8 proper?
9 A. No.
10 Q. And weren't the assets of ACET Global
11 originally purchased from Mr. Damti's company?
12 A. Yes.
13 Q. Okay. A transaction of that size, do you
14 typically see that done without a security agreement?
15 A. Frequently.
16 Q. And didn't Hallett & Perrin actually draft a
17 security agreement?
18 A. I don't know.
19 Q. Okay. Did you obtain an inventory listing from
20 Windspeed?
21 A. An inventory listing of what?
22 Q. Of ACET Global's assets.
23 A. I received an inventory listing from Matt.
24 Q. Okay. Who was Matt with?
25 A. Baymark.

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1 Q. Okay. Did you know that that inventory had
2 come from Windspeed?
3 MR. PERRIN: Objection, form.
4 A. I think it was ACET assets that Super G had
5 asked Windspeed to look after.
6 Q. Okay. ACET assets that Super G had asked
7 Windspeed to look after?
8 A. I don't know that for sure. I don't know how
9 the asset list came to be in Bill Szeto's possession.
10 Q. Okay. But that was your understanding at the
11 time?
12 A. I'm not sure I even had an understanding at the
13 time.
14 Q. Okay. Well, what gave you -- what would have
15 put in your head that Super G had, for some reason,
16 asked Windspeed to look after ACET Global's assets?
17 A. I don't know that there was anything at the
18 time that made me. I'm not even sure I'm aware that
19 Windspeed had the asset list for ACET Global at the time
20 all of this was happening.
21 Q. Okay. Well, why would you have thought at any
22 point in time Windspeed would just be watching after
23 ACET Global's assets?
24 A. Well, you told me that Windspeed was provided
25 the asset list for ACET Global.

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1 Q. No, I asked if you knew that.
2 MR. PERRIN: Objection, form.
3 A. And I said I did not know that at the time of
4 the (indiscernible) stuff.
5 Q. Okay. But that it was your understanding that
6 Windspeed was just looking after the assets of ACET
7 Global?
8 A. No, I don't have any understanding, or I
9 don't -- I never thought about where the inventory list
10 came from or whose it was or who produced it. It was
11 just an exhibit to a document.
12 Q. Okay. Let's look at Exhibit 20.
13 (Exhibit No. 20 marked.)
14 Q. Do you recognize this document?
15 A. Yes.
16 Q. Okay. And is this an e-mail exchange between
17 you and Mr. Vanderwoude?
18 A. Yes.
19 Q. Okay. And is the subject line ACET Inventory
20 as of 1/24/2019?
21 A. Yes.
22 Q. Okay. And why did you need this inventory?
23 A. It was an attachment to the foreclosure sale
24 agreement, I think.
25 Q. Okay. And is that what you said here on page 1

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1 in your e-mail to Brian, here is an updated inventory
2 listing for the foreclosure agreement, any word from
3 Super G?
4 A. That's what I said in the e-mail.
5 Q. Okay. Does this appear to be a true and
6 correct copy of your e-mail?
7 A. Yes.
8 Q. Okay. Why did you need an updated inventory as
9 of 1/24/2019?
10 A. I don't know that there was a particular reason
11 for it, but we normally want the inventory as of the
12 date of the agreement.
13 Q. Okay. And why would ACET's inventory be
14 changing from the prior version you had received?
15 A. I have no idea.
16 Q. Okay. Did you ever ask that question?
17 A. No.
18 Q. Who was in possession of ACET Global's assets
19 at this time?
20 A. I have no idea.
21 Q. Did you ever ask Windspeed to confirm the
22 inventory?
23 A. I didn't.
24 Q. Or the equipment schedules?
25 A. I did not.

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1 Q. Okay. Did you ask someone else to do that?

2 A. No.

3 Q. Okay.

4 A. I would have asked for copies of that --

5 whatever was an exhibit to the -- whatever agreements

6 were working, I would have asked the business folks to

7 provide me with copies of that so that I could attach it

8 to the back, but I wouldn't have spent any time thinking

9 about it.

10 Q. Okay. Did you want to make sure that the

11 inventories were in final form?

12 A. I wanted to make sure that the business folks

13 all agreed to what was being attached as the exhibit.

14 Q. Okay. And this e-mail chain, if you look

15 below, originally the ACET inventory was requested --

16 was sent by Bill Szeto of Windspeed to Matt Denegre,

17 from Matt Denegre to you, and from you to Brian

18 Vanderwoude?

19 A. Yes.

20 Q. Is that correct?

21 A. Yep.

22 Q. Okay.

23 MR. FREEMAN: Do we want to take a break?

24 MR. PERRIN: I'm good with that.

25 MR. FREEMAN: This is a decent place for a

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1 quick break.

2 MR. PERRIN: All right.

3 MR. FREEMAN: We can go off the record.

4 (Break taken from 3:51 p.m. to 4:07 p.m.)

5 MR. FREEMAN: Okay. Back on the record.

6 Q. Ms. Smith, I'm putting on the screen what's

7 marked as Exhibit 21.

8 (Exhibit No. 21 marked.)

9 Q. Do you see this document?

10 A. Yes.

11 Q. And was this an e-mail exchange between you and

12 Mr. Vanderwoude?

13 A. Yes.

14 Q. January 31st, 2019?

15 A. Yes.

16 Q. And he stated that, I'm told the attached

17 letter is going out in tomorrow's mail, so we can use

18 that date to calculate the closing date for the asset

19 sale.

20 A. Yes.

21 Q. Was he referring to the notice of disposition

22 of assets?

23 A. Yes.

24 Q. And we'll go to Exhibit 22.

25 (Exhibit No. 22 marked.)

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1 Q. Do you recognize this e-mail?

2 A. Yes.

3 Q. Is this an e-mail exchange between you and

4 Mr. Vanderwoude as well?

5 A. Yes.

6 Q. Okay. Is this in February of 2019?

7 A. Yes. I mean, it starts in January, but ends in

8 February.

9 Q. Okay. Subject line, ACET?

10 A. Yes.

11 Q. And he says -- Brian says, please see the

12 attached version of the agreement, and let me know if it

13 is acceptable to you and Windspeed?

14 A. Yes.

15 Q. Why did he ask if it was acceptable to you and

16 Windspeed?

17 A. To Baymark and Windspeed?

18 Q. Okay. Is that what he meant by that?

19 A. I presume.

20 Q. And what did you say in response? It says, the

21 foreclosure sale -- the foreclosure of sale agreement

22 looks good to me. I've asked Windspeed to confirm the

23 inventory and equipment schedules are in final form and

24 also for the name and title of the person to sign on

25 behalf of Windspeed.

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1 Why were you asking Windspeed to confirm

2 these items rather than Mr. Vanderwoude asking Windspeed

3 directly?

4 A. We were all working together to finalize this

5 transaction and close it.

6 Q. Okay.

7 A. It was just whoever was moving the ball

8 forward.

9 Q. Did he understand you to be representing

10 Windspeed?

11 A. I don't believe so. I don't know who he

12 thought I -- I mean, assuming he thought I represented

13 Baymark.

14 Q. Okay. Have you worked with Mr. Vanderwoude

15 since?

16 A. I don't think so.

17 Q. Have you worked on a number of transactions

18 with Mr. Vanderwoude?

19 A. No.

20 Q. Ms. Smith, I'm putting up what's marked as

21 Exhibit 30.

22 (Exhibit No. 30 marked.)

23 Q. Can you see this document?

24 A. Yes.

25 Q. And are you familiar with this e-mail?

<p style="text-align: right;">Page 118</p> <p>1 A. Give me a second. Yes.</p> <p>2 Q. Is this an e-mail between you and</p> <p>3 Mr. Vanderwoude?</p> <p>4 A. Correct.</p> <p>5 Q. And Michelle Shriro?</p> <p>6 A. Shriro (different pronunciation).</p> <p>7 Q. Shriro. And who is Ms. Shriro?</p> <p>8 A. Counsel to Baymark.</p> <p>9 Q. And she represented Baymark Partners?</p> <p>10 A. She would have represented, I think, Baymark</p> <p>11 ACET Holdco.</p> <p>12 Q. Okay. And is she bankruptcy counsel,</p> <p>13 foreclosure counsel, corporate counsel?</p> <p>14 A. She does both.</p> <p>15 Q. Okay. And this e-mail is in December of 2018?</p> <p>16 A. Yes.</p> <p>17 Q. With the subject line ACET, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And on page 2, Brian states, can we do a call</p> <p>20 with Julie Smith -- who also represents the parties in</p> <p>21 this case; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. What parties did you represent?</p> <p>24 A. ACET and ACET Holdco.</p> <p>25 Q. And based on this e-mail thread, did you, in</p>	<p style="text-align: right;">Page 120</p> <p>1 agreement?</p> <p>2 A. I don't think ACET needed to be a party of its,</p> <p>3 you know, downfall, basically, but if Super G wanted</p> <p>4 access to the assets, they could foreclose on them.</p> <p>5 Q. But -- okay. So ACET -- it wouldn't be right</p> <p>6 for ACET to be a party to its own downfall?</p> <p>7 MR. PERRIN: Objection, form.</p> <p>8 A. Right. This was not a -- this wasn't a happy</p> <p>9 event. Their senior lender is foreclosing.</p> <p>10 Q. Okay. So this was not something to be</p> <p>11 celebrated or congratulated about?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Here, what -- I'm going to take you back</p> <p>14 to Exhibit 9.</p> <p>15 (Exhibit No. 9 marked.)</p> <p>16 Q. Do you recall looking at this document?</p> <p>17 A. Looking at the e-mail?</p> <p>18 Q. Yes, ma'am.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And is this document -- does it reflect</p> <p>21 an e-mail between you and Matt Denegre and Alex Szeto</p> <p>22 and Alex Godinez?</p> <p>23 A. Yes.</p> <p>24 Q. And Steve Bellah and Carrie Williamson?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 fact, have a conference call with Brian and Michelle?</p> <p>2 A. Yes.</p> <p>3 Q. And what did you discuss?</p> <p>4 A. I think they originally had it drafted as an</p> <p>5 asset agreement, a tri-party asset purchase agreement,</p> <p>6 and I said that we would not -- we, ACET, would not sign</p> <p>7 a purchase agreement. We wouldn't impede their exercise</p> <p>8 of their foreclosure rights under the security</p> <p>9 agreement. We weren't going to voluntarily enter into a</p> <p>10 purchase agreement.</p> <p>11 Q. Okay. Why weren't you going to voluntarily</p> <p>12 enter into a purchase agreement?</p> <p>13 A. If they were going to foreclosure on us, they</p> <p>14 were going to have to foreclosure on us.</p> <p>15 Q. You weren't going to sell the assets to them?</p> <p>16 A. No.</p> <p>17 Q. What were the proposed terms of the asset</p> <p>18 purchase agreement?</p> <p>19 A. I never saw it that I can recall.</p> <p>20 Q. Okay. Was the amount of the purchase price</p> <p>21 substantially different?</p> <p>22 A. I don't think so. I think it was -- I think it</p> <p>23 was -- actually, I have no idea. I don't know that I</p> <p>24 saw it.</p> <p>25 Q. Why were you opposed to an asset purchase</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Okay. And is the subject line, Windspeed</p> <p>2 Executed Documents?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And right below, is this an e-mail from</p> <p>5 you, Ms. Smith?</p> <p>6 A. Yes.</p> <p>7 Q. And does it state, great, exclamation,</p> <p>8 congratulations, folks, the transaction is closed?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And if we could, just go back to</p> <p>11 Exhibit 30. Why, again, were you so opposed or was ACET</p> <p>12 so opposed to an asset purchase agreement?</p> <p>13 A. In relation to Exhibit 9?</p> <p>14 Q. No, just -- I'm trying to understand why an</p> <p>15 asset purchase agreement was so much worse than a</p> <p>16 foreclosure.</p> <p>17 A. Well, ACET had granted a security interest to</p> <p>18 its lender, it was in default under the loan. Up until</p> <p>19 some point, you know, the lender had fore -- I don't</p> <p>20 know if it actually ever technically forebore, but now</p> <p>21 at this point, they were ready to -- they, Super G,</p> <p>22 wanted to wind up and get out of this investment, this</p> <p>23 loan. That's all fine, that's all within their rights</p> <p>24 under the loan and the security agreement. We have the</p> <p>25 obligations to cooperate with them, et cetera, et</p>

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<p>1 cetera, but we did not have to agree to sell the assets.</p> <p>2 Q. Okay. So you're telling me, when I put Brian</p> <p>3 Vanderwoude on the stand, his testimony is going to be</p> <p>4 consistent with that recollection?</p> <p>5 A. It should be.</p> <p>6 Q. Okay. So he understood you were adamant that</p> <p>7 there would be no asset purchase agreement?</p> <p>8 A. He should -- yes, he should be -- he should</p> <p>9 remember it that way.</p> <p>10 Q. Okay. When's the last time you spoke with</p> <p>11 Mr. Vanderwoude?</p> <p>12 A. January of -- March of -- March of 2019.</p> <p>13 Q. Okay.</p> <p>14 A. It's possible we would have traded e-mails</p> <p>15 shortly after that with closing binders, but I don't</p> <p>16 remember having any substantive e-mails with him beyond</p> <p>17 this closing.</p> <p>18 Q. Okay. And do you have any transactions</p> <p>19 currently pending involving Mr. Vanderwoude?</p> <p>20 A. No.</p> <p>21 Q. Do you have any reason to engage in any</p> <p>22 communication with him right now?</p> <p>23 A. No.</p> <p>24 Q. This -- on this document where he had stated</p> <p>25 Julie Smith also represents the parties in this case,</p>	<p>1 A. I don't recall.</p> <p>2 Q. Do you know if they were consulted about</p> <p>3 changing this to a two-party agreement that would not</p> <p>4 involve ACET?</p> <p>5 A. I don't recall.</p> <p>6 Q. Did you ever express to anyone at Windspeed,</p> <p>7 including Bill or Alex, that ACET Global was adamant</p> <p>8 that it would not engage in an asset purchase agreement?</p> <p>9 A. I don't have a specific recollection of a</p> <p>10 conversation with them, but it wasn't a secret that we</p> <p>11 did not want to sign a purchase agreement, so I --</p> <p>12 Q. Okay.</p> <p>13 A. -- I would believe that they would have heard</p> <p>14 that.</p> <p>15 Q. Would an agreement without ACET be cleaner?</p> <p>16 MR. PERRIN: Objection, form.</p> <p>17 A. Cleaner than --</p> <p>18 Q. A tri-party agreement.</p> <p>19 A. Well, it's clearer in that, you know, there's</p> <p>20 statutory rules involved with it, so if the statutory</p> <p>21 rules are followed, the results will be more certain.</p> <p>22 Q. And what do you mean by -- what results would</p> <p>23 be more certain?</p> <p>24 A. That the asset -- that the foreclosure would</p> <p>25 happen -- properly happen, and the assets would convey.</p>
Page 123	Page 125
<p>1 again, you understood that to mean ACET or Baymark, not</p> <p>2 Windspeed?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. But who were the parties to this -- to</p> <p>5 the documents at issue? Was that Windspeed and Super G?</p> <p>6 A. This e-mail is regarding the foreclosure sale</p> <p>7 agreement --</p> <p>8 Q. Okay.</p> <p>9 A. -- versus a tri-party agreement with ACET. So</p> <p>10 in this instance, I was representing ACET saying we</p> <p>11 would not sign a tri-party agreement.</p> <p>12 Q. Okay. And after you removed ACET from it, does</p> <p>13 Mr. Vanderwoude then go and involve Windspeed counsel</p> <p>14 about the new two-party agreement between Windspeed and</p> <p>15 Super G?</p> <p>16 A. I believe that Bill Adams' attorney reviewed</p> <p>17 the document and negotiated that.</p> <p>18 Q. Okay. And did Mr. Vanderwoude state, we</p> <p>19 enjoyed speaking with you earlier, an updated draft of</p> <p>20 the agreement is attached, it's now set up as a</p> <p>21 foreclosure sale agreement between Windspeed and Super G</p> <p>22 rather than a tri-party agreement involving ACET? Is</p> <p>23 that correct?</p> <p>24 A. That's what the e-mail says.</p> <p>25 Q. Was Bill or Alex on that call?</p>	<p>1 Q. Okay. Would it look better?</p> <p>2 MR. PERRIN: Objection, form.</p> <p>3 A. What do you mean?</p> <p>4 Q. Would it look better to remove ACET Global from</p> <p>5 the transactional documents?</p> <p>6 A. Look better to whom?</p> <p>7 Q. Someone looking at it a couple of years after</p> <p>8 the fact.</p> <p>9 A. Oh, like Jason Freeman?</p> <p>10 Q. Correct.</p> <p>11 A. I don't know. I think that -- I don't know if</p> <p>12 they would make it look better or worse.</p> <p>13 Q. Did you have any discussions with anyone about</p> <p>14 whether that would decrease the risk of successor</p> <p>15 liability?</p> <p>16 A. I don't know if -- I don't recall now the</p> <p>17 context of successor liability, and I don't recall if it</p> <p>18 was as it relates to purchase agreement versus a</p> <p>19 foreclosure sale agreement. I know I had discussions</p> <p>20 with Brian Vanderwoude about successor liability, and we</p> <p>21 all determined it wasn't -- it was a risk but not a</p> <p>22 risk -- an insurmountable risk.</p> <p>23 Q. Okay. What made it not insurmountable?</p> <p>24 A. Well, let me back up. We advised clients as to</p> <p>25 what the risk would be -- successor liability and</p>

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<p>1 otherwise in this transaction, and they made the 2 decision of moving forward or not -- 3 Q. So you -- 4 A. -- in the structure, et cetera. 5 Q. You basically advised the clients there may be 6 a risk, and the client decides whether they're willing 7 to take on that risk? 8 A. Generally, that is, yes, my -- what my job is 9 is to identify a risk and liabilities and present it to 10 this client so they can make an informed decision about 11 how they want to move forward in this deal and every 12 other deal. 13 Q. Okay. Well, in this deal, did you have any -- 14 did you have discussions with your clients that they 15 might have risk on this transaction, that it would be 16 viewed as a fraudulent transfer? 17 A. Any discussions I had with my client would be 18 covered by attorney-client privilege. 19 Q. In late March of 2019, were you still working 20 through the loan agreement? 21 A. My recollection is that the loan agreement was 22 finalized. It's just never been signed, and it's 23 probably in part because I was on family medical leave. 24 Q. Well, were you possibly still discussing some 25 changes to the loan agreement, though, in March -- late</p>	<p>1 counsel on this? 2 A. No. It looks like I was responding to the 3 e-mail I received. 4 Q. Okay. And do you generally engage in 5 correspondence with another firm's client directly? 6 A. No. 7 Q. Is it possible at this point in time you might 8 have gotten confused and thought you were representing 9 Windspeed? 10 A. No. 11 Q. On this e-mail link, on page 2, excuse me, on 12 the e-mail chain on page 2, this is an e-mail from you 13 to Matt Denegre on March 19th, 2019? 14 A. Uh-huh. 15 Q. And you state that Super G's attorney and I 16 have been discussing a couple of changes to the loan 17 agreement that are not substantive, but might make Super 18 G's back office folks happy; is that right? 19 A. That's what it says. 20 Q. And that you were still working through the 21 language? 22 A. Yes. 23 Q. So wasn't it, in fact, the case that, at least 24 of March 19th, 2019, the loan agreement had not been 25 finalized?</p>
Page 127	Page 129
<p>1 March 2019? 2 A. I don't recall changes to that. If there were 3 changes, it might have been to update dollar amounts or 4 dates. I don't -- my memory is that that agreement was 5 in basically final form at the end of January. 6 Q. Okay. I'm putting on the screen what's marked 7 as Exhibit 23. 8 (Exhibit No. 23 marked.) 9 Q. Do you see that document? 10 A. Yes. 11 Q. And is that an e-mail between you, Matt 12 Denegre, and William Szeto? 13 A. Yes. 14 Q. Okay. And is that dated March 19th, 2019? 15 A. Yes. 16 Q. And the subject line is, Windspeed/Super G loan 17 agreement? 18 A. Yes. 19 Q. Okay. And you -- on this e-mail, there's no 20 one else on here. Do you generally -- in your -- you 21 maintain the Hallett & Perrin is not representing 22 Windspeed at this point in time? 23 MR. PERRIN: Objection, form. 24 A. Yes, no, I'm -- I maintain that, yes. 25 Q. Okay. But you have not cc'd Windspeed's</p>	<p>1 A. It appears so. 2 Q. And Ms. Smith, has any third parties ever 3 referred to you as Windspeed's lawyer? 4 A. I have no idea. 5 Q. Has Mr. Vanderwoude referred to you as 6 Windspeed's lawyer ever? 7 A. I don't recall. 8 Q. Ms. Smith, I'm putting up what's marked as 9 Exhibit 24 to this deposition. 10 (Exhibit No. 24 marked.) 11 Q. Do you see this? 12 A. Yes. 13 Q. And is this an e-mail between Mr. Vanderwoude 14 and you on March 19th, 2019? 15 A. Yes. 16 Q. And on the fourth page of this e-mail exchange, 17 is this an e-mail from you to Mr. Vanderwoude? 18 A. Yes. 19 Q. And it also includes Matt Denegre? 20 A. Yes. 21 Q. Okay. So you, Brian Vanderwoude, and Matt 22 Denegre on March 3rd, 2019, right? 23 A. Uh-huh. 24 Q. And the subject line is Windspeed/Super G Loan 25 Agreement?</p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 130</p> <p>1 A. Yes.</p> <p>2 Q. And it says, Brian, attached is a red-line of</p> <p>3 the version you sent on Friday to the latest version in</p> <p>4 our system.</p> <p>5 Is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And then above that, Mr. Vanderwoude</p> <p>8 e-mails Steve Bellah of Super G Capital, and he states,</p> <p>9 see comments below from Windspeed's lawyer. Do you see</p> <p>10 that?</p> <p>11 A. I do.</p> <p>12 Q. Now, Mr. Vanderwoude was the attorney that you</p> <p>13 were working on this transaction with closely, right?</p> <p>14 A. Yes.</p> <p>15 Q. And you and Mr. Vanderwoude were having lots of</p> <p>16 discussions and exchanges of e-mails on this</p> <p>17 transaction?</p> <p>18 A. I don't know about the word "lots," but yes,</p> <p>19 there were discussions and e-mails.</p> <p>20 Q. Y'all were proposing changes for your clients?</p> <p>21 A. We were, yes, proposing changes to the</p> <p>22 documents.</p> <p>23 Q. Okay. Any idea why Mr. Vanderwoude would be</p> <p>24 mistaken that you were Windspeed's lawyer?</p> <p>25 A. You'll have to ask him.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Let me show you what's marked as Exhibit 25.</p> <p>2 (Exhibit No. 25 marked.)</p> <p>3 Q. Ms. Smith, do you recognize this document as an</p> <p>4 e-mail between yourself, Matt Denegre, and cc'g William</p> <p>5 Szeto?</p> <p>6 A. Yes.</p> <p>7 Q. Is this from March 20th, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And did you state that Super G wants to date</p> <p>10 the loan agreement as of March 1st which means the loan</p> <p>11 will start accruing interest as of 3/1?</p> <p>12 A. Yes, I did state that.</p> <p>13 Q. Okay. Why did Super G want the loan agreement</p> <p>14 to be dated March 1st?</p> <p>15 A. It looks like it's because the loan would start</p> <p>16 accruing interest on 3/1.</p> <p>17 Q. Okay. Have they, in fact, been paying interest</p> <p>18 on the loan?</p> <p>19 A. I don't know. Didn't Matt respond to that?</p> <p>20 Q. I don't know. Do you know if he did?</p> <p>21 A. I don't know. It seems to me that we backdated</p> <p>22 it to March 1st, so perhaps they were accruing interest</p> <p>23 on the loan at that point and paying interest.</p> <p>24 Q. Okay. I'm showing you what's marked as</p> <p>25 Exhibit 26.</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Who wanted the foreclosure sale agreement to be</p> <p>2 backdated?</p> <p>3 A. I don't think -- I don't know. I think that</p> <p>4 fell through the cracks when I left on leave. We</p> <p>5 intended to get it closed, and then it all fell through</p> <p>6 or stuff got pushed to the back of -- back burner. When</p> <p>7 I came back into the office, we just finalized and</p> <p>8 executed the document.</p> <p>9 Q. Okay. Did anyone want the loan agreement to be</p> <p>10 backdated?</p> <p>11 A. I think the loan agreement says March 1st. I</p> <p>12 think -- isn't that what we're talking about here?</p> <p>13 Q. Right. Any of these documents, was there any</p> <p>14 reason that anyone wanted them backdated?</p> <p>15 A. No, other than just to represent sort of when</p> <p>16 the parties had agreed to all of this stuff.</p> <p>17 Q. Okay. But weren't there changes still being</p> <p>18 made at this time?</p> <p>19 A. I think they were primarily updating doc --</p> <p>20 updating numbers. I don't think there were substantive</p> <p>21 changes.</p> <p>22 Q. Okay. Did you have a discussion with Baymark</p> <p>23 Partners about dating a loan agreement with a prior</p> <p>24 date?</p> <p>25 A. I don't recall a specific discussion.</p>	<p style="text-align: right;">Page 133</p> <p>1 (Exhibit No. 26 marked.)</p> <p>2 Q. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And it's an e-mail from Matt Denegre to you and</p> <p>5 Mr. Szeto?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And is this e-mail from you on March</p> <p>8 21st, below that, it states, these changes are fine with</p> <p>9 me if the numbers look right to you. Just let me know.</p> <p>10 Then, OMG, we could be close to signing this thing.</p> <p>11 Is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So was this a sense of excitement to be</p> <p>14 nearing the end of this transaction?</p> <p>15 A. "Relief" might be a better word.</p> <p>16 Q. Okay. Was everyone happy to be getting to this</p> <p>17 point?</p> <p>18 A. Yes, because this is a -- not a transaction</p> <p>19 that should have taken, you know, four months or three</p> <p>20 months, December to -- I guess three months, December to</p> <p>21 March.</p> <p>22 Q. Okay. And why is that?</p> <p>23 A. Because the documents aren't complicated.</p> <p>24 They're checking, and the foreclosure agreement is</p> <p>25 statutorily driven. The purchase -- the loan and</p>

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1 security agreement was based on a form that had been
2 negotiated back in the fall. It just did not need to
3 take this long, but there were things that happened, I
4 guess, in the interim that slowed the process down.
5 Q. Okay. And I'm showing you what's marked as
6 Exhibit 27.
7 (Exhibit No. 27 marked.)
8 Q. Do you see this?
9 A. Yes.
10 Q. Is this an e-mail from you to Matt Denegre and
11 William Szeto?
12 A. Yes.
13 Q. On March 21st, 2019?
14 A. Yes.
15 Q. Does this appear to be a true and correct copy
16 of that e-mail?
17 A. Yes.
18 Q. Okay. And does it state on here, Matt and
19 Bill, attached are the signature pages that Bill will
20 sign in connection with the foreclosure sale and the
21 assumption of the ACET loan?
22 A. That's what it says.
23 Q. Okay. Now, how did you understand this
24 assumption of the ACET loan to be effectuated?
25 A. What do you mean?

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1 Q. Well, how exactly was Windspeed assuming the
2 ACET loan?
3 A. I think just that. They were assuming the loan
4 -- the obligations under the loan from ACET.
5 Q. Okay.
6 A. I'm not trying to be snarky. I'm not sure I
7 understand your question.
8 Q. Well, were they -- was there actually an
9 assignment over of that loan? Is that typically how
10 that would occur?
11 A. I think the assignment was built into the loan
12 and security agreement. Again, I don't have these
13 documents in front of me, but I think the recital to the
14 loan and security agreement describe it.
15 Q. Okay. Is it possible that Windspeed merely
16 entered into a loan with Super G for the amount -- the
17 same amount of the outstanding loan that was owed by
18 ACET?
19 A. Well, they entered into an amended and restated
20 agreement of the ACET loan. Yes, they did enter into a
21 loan agreement.
22 Q. Okay. But rather than signing over the old
23 ACET loan, didn't Windspeed just enter into a loan
24 agreement directly with Super G for the same amount of
25 that old loan?

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1 MR. PERRIN: Objection, form.
2 A. No. I think that they assumed the obligations
3 of ACET under the loan in the amended and restated loan
4 agreement.
5 Q. Okay. Did you work on that?
6 A. On the amended and restated loan agreement?
7 Q. Yes, ma'am.
8 A. Yes.
9 Q. I'm on Exhibit 28.
10 (Exhibit No. 28 marked.)
11 Q. Do you recognize this document?
12 A. Yes.
13 Q. Okay. And is this an e-mail from you to
14 Mr. Vanderwoude?
15 A. Yes.
16 Q. Okay. And does it state that you're attaching
17 Windspeed's signature pages to the documents?
18 A. Yes.
19 Q. But you were not acting as Windspeed's attorney
20 here, correct?
21 A. No. I was the attorney to one of the managers
22 on the board of managers.
23 Q. Okay. And why didn't you -- well, let me ask
24 you, did that person who was on the board of managers,
25 is that the person who signed this document?

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1 A. A board member signed the document, yes.
2 Q. Okay. And when you say, a board member, are
3 you referring to the one that I just asked you about?
4 A. William Szeto signed the documents.
5 Q. The CEO of Windspeed, correct?
6 A. Yes.
7 Q. And in his capacity as the CEO of Windspeed,
8 right?
9 A. I think so. You have to look at the signature
10 pages to see if he signed it as CEO or manager.
11 Q. In fact, he signed everything that you've ever
12 seen from Windspeed as the CEO of Windspeed, correct?
13 A. No, actually, I have no idea. If he would have
14 signed it, my guess would be either CEO or manager.
15 Q. Have you ever seen him sign anything as manager
16 of Windspeed?
17 THE WITNESS: Is that on that same
18 attachment?
19 MR. PERRIN: Yes.
20 A. It looks like he signed that -- the notes
21 attached to that as manager.
22 Q. Okay. The note that's attached to this --
23 A. The document that's attached to that.
24 Assignment assumption agreement.
25 Q. Okay. So is that what you obtained from him?

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<p>1 A. Presumably, I obtained all of the stuff from 2 him that I sent to Brian. 3 Q. Okay. Because I'm going down here to the 4 fourth page of the PDF which is the amended and restated 5 business loan and security agreement. 6 A. Okay. 7 Q. Looks to be signed by William Szeto. 8 A. As CEO. 9 Q. Yeah. Is that the title under there? 10 A. Yes. 11 Q. William Szeto as CEO? 12 A. Yes. 13 Q. Okay. In fact, isn't that how he held himself 14 out with Windspeed? 15 A. Yeah, he was the CEO. 16 Q. Would you be surprised to hear him refer to 17 the, quote, board of Windspeed as a sham? 18 A. No. Actually, I have no idea. I don't know 19 what he said. In what context? 20 Q. Well, did you ever see anyone actually engage 21 in any activities in their capacity as a board member of 22 Windspeed? 23 A. I'm not sure what you're asking. It looks 24 like -- 25 THE WITNESS: Is this the same exhibit he's</p>	<p>1 Q. Okay. 2 A. I'm not sure I understand the question. Repeat 3 it, and I'll try to answer it. 4 Q. Well, that -- I'm just -- is there any 5 document -- have you ever seen him -- outside of 6 anything that you've provided to him, have you ever seen 7 him represent himself to be on the board of managers of 8 Windspeed? 9 A. I don't think I've ever seen any documents from 10 him other than these. 11 Q. Okay. And outside of this, you know, this 12 particular transaction, what are you aware of where any 13 member of this so-called board of Windspeed has ever 14 taken an action in that capacity? 15 A. Well, I don't have the documents in front of 16 me, but I'm assuming we would have had more resolutions 17 to approve the change in the loan agreement and the 18 asset and the foreclosure sale agreement. 19 Q. Have you ever seen those? 20 A. I'd have to go look. 21 Q. Do you know if those were produced in this 22 case? 23 A. I don't know. I don't know that we drafted 24 them. 25 Q. Okay. Were you involved at all in the bank --</p>
Page 139	Page 141
<p>1 looking at? 2 A. It looks like one of the signature pages on 3 this exhibit, he signs as manager. 4 Q. Okay. You're referring to the fifth page? 5 MR. PERRIN: Keep scrolling. 6 A. No, he's on it. Yeah, the -- 7 MR. FREEMAN: I think I'm on the page, Ed. 8 THE WITNESS: Yeah. 9 Q. This is the document you drafted, correct? 10 MR. PERRIN: There's more than one page 11 that is signed. 12 THE WITNESS: Oh, as manager. 13 MR. FREEMAN: It looks the same here. 14 Q. These are the documents you drafted, correct? 15 A. I -- I'm not sure what documents they are, but 16 I drafted or negotiated and revised all of them. 17 Q. Correct. And have you ever seen him provide 18 you with anything where he wrote his title to be 19 manager? 20 A. You mean what -- a document that gave him 21 authority? 22 Q. No, just a document where he wrote to you and 23 held himself out as manager. 24 A. I don't know that there was any document he 25 sent me that he signed as --</p>	<p>1 ACET Global's bankruptcy filing? 2 A. Was I involved in what? 3 Q. The ACET Global bankruptcy filing. 4 A. No. 5 Q. But that was your client, correct? 6 A. Yes. 7 Q. And why were you not involved in any matter? 8 A. I'm not a bankruptcy attorney. 9 Q. Was Hallett & Perrin involved? 10 A. Not to my knowledge. If someone at Hallett & 11 Perrin was involved, it would have -- probably would 12 have been me, but I think Michelle Shriro handled all of 13 that stuff. 14 Q. Okay. And there's no one there with -- at 15 Hallett & Perrin with bankruptcy expertise? 16 A. No, huh-uh. 17 Q. Well, the good news for you is I have got to go 18 teach a class at SMU in about ten minutes. I think we 19 are to a good stopping point. I know this is your first 20 deposition, but when I stop, sometimes that means you've 21 got additional questions from the other side. I'm 22 probably done, but I will go ahead and pass the witness. 23 MR. PERRIN: On behalf of the Baymark 24 defendants, we reserve questions until the time of 25 trial.</p>

36 (Pages 138 to 141)

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1 MS. HARD-WILSON: And on behalf of
2 Windspeed, we also reserve our questions.
3 MR. FREEMAN: Ms. Smith, thanks for taking
4 a long period out of your day and sitting through this.
5 I know it wasn't fun.
6 THE WITNESS: No problem.
7 MR. FREEMAN: I appreciate it.
8 THE WITNESS: You're welcome.
9 MR. PERRIN: All right. We're done?
10 THE REPORTER: Yes. Can I get your orders
11 -- whoever wants to order a copy, can I get your orders
12 on the record, please?
13 MR. PERRIN: Yes. Ms. McPhearson, Ed
14 Perrin, we'd like a copy.
15 THE REPORTER: Okay. Do you like
16 electronic, a hard copy?
17 MR. PERRIN: I would like an electronic.
18 MS. HARD-WILSON: Windspeed doesn't need a
19 copy.
20 MR. FREEMAN: And D&T would like it
21 expedited.
22 MR. PERRIN: Mrs. McPhearson, we would like
23 to read and sign.
24 REPORTER'S NOTE: (Mr. Freeman agreed on a
25 rough draft)

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1 (Deposition concluded at 4:42 p.m.)
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1 CHANGES AND SIGNATURE
2 WITNESS NAME: JULIE A. SMITH DATE: APRIL 13, 2021
3 PAGE LINE CHANGE REASON
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 I, JULIE A. SMITH, have read the foregoing
15 deposition and hereby affix my signature that same is
16 true and correct, with the changes, if any, as noted
17 above.
18 _____
19 JULIE A. SMITH
20 THE STATE OF _____)
21 COUNTY OF _____)
22 Sworn to and subscribed before me on the _____ day
23 of _____, _____ by JULIE A. SMITH.
24 _____
25 NOTARY PUBLIC

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1 CAUSE NO. DC-19-09828
2 D&T PARTNERS, LLC) IN THE DISTRICT COURT
3 (successor in interest to)
4 ACET VENTURE PARTNERS,)
5 LLC),)
6 Plaintiff,)
7 VS.)
8) DALLAS COUNTY, TEXAS
9 ACET GLOBAL, LLC; BAYMARK)
10 ACET HOLDCO, LLC; BAYMARK)
11 ACET DIRECT INVEST, LLC;)
12 BAYMARK MANAGEMENT, LLC;)
13 Baymark Partners; DAVID)
14 HOOK; TONY LUDLOW; and)
15 Windspeed Trading, LLC,)
16)
17 Defendants.) 116TH JUDICIAL DISTRICT
18
19 REPORTER'S CERTIFICATION
20 DEPOSITION OF JULIE A SMITH
21 APRIL 13, 2021
22
23 I, Larissa L. McPhearson, Certified Shorthand
24 Reporter in and for the State of Texas, hereby certify
25 to the following:
That the witness, JULIE A. SMITH, was duly sworn by
me and that the transcript of the oral deposition is a
true record of the testimony given by the witness;
That the deposition transcript was submitted on
_____ to the witness or to the attorney for the
witness for examination, signature and return to me by
_____;

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1 That the amount of time used by each party at the
2 deposition is as follows:

3 Mr. Jason B. Freeman - 02 HOURS:56 MINUTES

Mr. Edward P. Perrin - 00 HOURS:00 MINUTES

4 Ms. Brenda Hard-Wilson - 00 HOURS:00 MINUTES

5 That pursuant to information given to the
6 deposition officer at the time said testimony was taken,
7 the following includes counsel for all parties of
8 record:

9 Mr. Jason B. Freeman, Attorney for Plaintiff

10 Mr. Edward P. Perrin, Attorney for Defendant, ACET
GLOBAL, LLC and BAYMARK

Ms. Brenda Hard-Wilson and Mr. Tim Woods, Attorneys
11 for Defendant WINDSPEED TRADING, LLC

12 I further certify that I am neither counsel for,
13 related to, nor employed by any of the parties or
14 attorneys in the action in which this proceeding was
15 taken, and further that I am not financially or
16 otherwise interested in the outcome of the action.

17 Certified to by me this 23rd day of April, 2021.

18
19

Larissa L. McPhearson, Texas CSR 8371

20 Expiration Date: 4/30/21

Usher Reporting Services

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Allen, Texas 75013

22 (214)755-1612

23
24
25

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